

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 124 OF 2022

(Originating from Misc. Civil Application No. 31 of 2022)

IDDI MFAUME YANGE APPLICANT

VERSUS

HEMED MUSTAFA (as legal representative of the late Salma Swalehe also known as
JAMILA MFAUME YANGE) RESPONDENT

RULING

22nd – 30th September, 2022.

MWANGA, J.

This is an application to set aside dismissal order of Hon. Ismail, J. dated 16th march, 2022 in Misc. Civil Application No. 31 of 2022. It was brought under Order IX Rule 3 of the Civil Procedure Code, Cap. 33 R.E 2019. The same was supported by an affidavit of Iddi Mfaume Yange. The respondent was not present hence, by leave of the court, the application was heard exparte.

By way of written submission, the applicant stated that on 13th January, 2022 he filed Misc. Civil Application No. 13 of 2022 asking for



extension of time to file reference against Bill of costs No.99 of 2020 that was delivered on 26th November, 2020.

The grounds advanced in support of the same was filed while the court was on vacation and that the court clerk in the name of Faith Sebukoto told him to come on the second week of February, 2022, which was 15th February, 2022.

The applicant submitted further that, while relying on the front desk officer directions to know the judge who was assigned to handle Misc. Civil Application No. 31 of 2022, he was told by the said court clerk to supply her with a copy of his chamber summons as a condition for a help. Afterwards, the said Court Clerk inserted date, and name of the judge on the blank space in a copy of chamber summons but, summons was not returned to the him until he supplied another copy of chamber summons on 18th February, 2022 to the same court clerk. Consequently, the court clerk inserted therein 3rd February, 2022 as the date that Misc. Civil Application No. 31 of 2022 was called on for the first time.

The said Faith Sebukoto directed the applicant to approach another court clerk of Hon. Ismail, J. to know the status of the case and it was the



time he was told that his case was dismissed on the same day i.e 16th February, 2022.

On the same note, the applicant states that failure to enter appearance was not intentional or negligence but rather he was misled by the court clerk. It was his contention that the said court clerk refused to swear an affidavit upon being requested to prove his assertion or claims.

I Have gone through the submission by the applicant and noted that, there was negligence on his part. There was a need for the applicant to report his concern to the Registrar or Depute registrar to procure the sworn affidavit of the court clerk if the same was true. This is so because, allegations raised against the court clerk are very serious. In order to apprehend the assertion of the applicant. Short of that the Court cannot measure truthfulness of the claims of the applicant. The Court in **Phares Wambura & 15 Others V. Tanzania electric Supply Company Ltd**, Civil Application No. 186 of 2016 TZCA (Unreported), the court stated that;

'The affidavit of the Court Clerk could have been useful to substantiate the applicant's assertions of his or her involvement in the matter'.

I have also looked into the steps taken to file an application to set aside the dismissal order which is about 24 days from the date of the ruling



of Hon. Ismail, J. Therefore, I find the application incompetent for lack of sufficient or good reason for the court to grant extension of time.

The application is hereby dismissed and I order that, the dismissal order of Ismail, J. dated 16/03/2022 be upheld.

It is so ordered.




H.R. MWANGA

JUDGE

30/09/2022

ORDER:

Ruling delivered in Chambers this 30th day of September, 2022 in the presence of the applicant and absence of the respondents.




H.R. MWANGA

JUDGE

30/09/2022