

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISC. CIVIL APPLICATION NO. 4 OF 2022

(Originating from Civil Appeal No. 10/2021 High Court of Tanzania at Sumbawanga)

ADAM SIMBACHAWENE.....APPLICANT

VERSUS

JACKSON JAMES MGUSU..... RESPONDENT

RULING

Date of last order: 22/08/2022

Date of Ruling: 30/09/2022

NDUNGURU, J.

The applicant one Adam Simbachawene is applying before this court for an order of restoration of Civil Case Appeal No. 10 of 2021 which was dismissed by this court for want of prosecution.

This application is brought under section Order IX, Rule 9 of the Civil Procedure Code (Cap 33. RE 2019). The application is supported by affidavit duly sworn by the applicant.

The reasons for this application are contained in the applicant's affidavit particularly paragraph 3. In the said paragraph (3) the applicant states; that he reported his absence to the court via a letter dated 05th March 2022 which was filed directly in the judiciary kiosk in this court.

The application being filed, the court issued summons to the respondent to appear and defend the application. Fate to the respondent, he never appeared. The court being satisfied that the respondent was served the court summons but denied to receive and sign it as endorsed by cell Chairperson (Mtendaji wa Mtaa) in the returned copy of summons, this court ordered the application be heard ex-parte against the respondent.

When this application was called upon for hearing, the applicant appeared himself (unrepresented). Submitting in support of the application, the applicant was of the contention that on the date the case was due for hearing he was sick and he notified the court on his absence through a

latter dated 05/03/2022 informing the court that he was sick and he could not be able appear in court.

He went on saying that he sent the notification letter to the court via court e-mail which is hcsumbawanga@judiciary.go.tz which was received by the Registrar of the High Court. He further told the court that he phoned to the court whereby the phone was picked by the court official who acknowledged to have received the letter and promised to table it before the trial Judge. He thus prayed dismissal order be set aside as he had played his part to inform the court his non-appearance.

The point of determination is whether the application is meritorious. In other words whether the applicant has shown sufficient cause for his non-appearance when the case was called for hearing and then dismissed for want of prosecution.

Sickness being a natural phenomenon it is out of anybody's control. Any person is eligible to. The fact that the applicant informed the court, I find that he was diligent enough. As he stated apart from e-mail he also phoned.

To my view, the applicant has shown sufficient cause for this court to grant this application as I do. The Civil Appeal No. 10 of 2021 is hereby restored.

No order as to costs. This is because the respondent had contributed nothing towards the dismissal of the case.

It is so ordered.




D. B NDUNGURU

JUDGE

30/09/2022