

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**DC CIVIL APPEAL NO. 19 OF 2022**

(Arising from the decision of the District Court of Dodoma at Dodoma in a Misc. Civil Application No. 29 of 2022 and originating from a Civil Case No. 5 of 2019 in the District Court of Dodoma at Dodoma)

**JORAM MWAKANSOPE..... APPELLANT**

**VERSUS**

**MARY MWANJELWA .....RESPONDENT**

*31/10/2022 & 2/11/2022*

**JUDGMENT**

**MASAJU, J**

The Appellant, Joram Mwakansope, successfully sued the Respondent, Mary Mwanjelwa in the District Court of Dodoma at Dodoma vide Civil Appeal No. 5 of 2019. The suit was heard *ex parte* against the Respondent. The Respondent then successfully filed a Miscellaneous Civil Application No. 29 of 2022 in the trial court for extension of time for her to file an Application for setting aside the *ex parte* judgment, hence the appeal in the Court.

The Appellant's Memorandum of Appeal is made up of three (3) grounds of appeal.

When the appeal was heard in the Court on the 30<sup>th</sup> day of August, 2022 the Appellant was represented by Mr. Erick Christopher, the learned counsel while the Respondent was represented by Mr. Majaliwa Wiga, the learned counsel.

The Appellant abandoned the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal and submitted only on the 3<sup>rd</sup> ground of appeal that there was no good cause for extending time to the Respondent to file an Application to set aside the *ex parte* judgment. That, in the Ruling at the 9<sup>th</sup> page the trial court stated that the Respondent had no reason to delay to file an Application for setting aside the *ex parte* judgment save the irregularities thereof. The Appellant cited **The Registered Trustees of BAKWATA Vs. The Registered Trustees of Dodoma General Muslim Association** (CAT) Civil Application No. 512/03 of 2019, Dodoma Registry that it guided in what amounts to irregularities. The Appellant prayed the Court to allow the appeal with costs.

The Respondent contested the appeal by submitting that there is the need for *inter parties* hearing of the suit since there is so much to be desired on the validity for the Appellant's claim. That, instead of the parties drafting issues as per Order VIII Rule 40 (1) (2) of the Civil Procedure Code, [Cap.

33 RE 2019] and setting of the date of trial, the trial court ordered *ex parte* hearing hence irregularity. The Respondent prayed the Court to dismiss the appeal with no order as to cost so that the Application for setting aside *ex parte* judgment can be heard accordingly.

That is what was shared by the parties in support of, and against the appeal in the Court.

In the trial court, the Respondent vide her Affidavit specifically at paragraphs 3-5 stated the reasons for her delay in filing the application for setting aside the *ex parte* judgment. That, her advocate in the main suit, negligently did not attend the matter, hence the Appellant's prayer for *ex parte* hearing. That, she was not even informed of the *ex parte* hearing and judgment thereof, hence her delay in filing her intended Application.

The Appellant did not file his Counter Affidavit, if any, in the trial court. The record only shows the Appellant's prayer to file his intended Counter Affidavit on the 6<sup>th</sup> day of April, 2022. But the original record lacks the Appellants' Counter Affidavit. During the hearing of the application, the Appellant neither adopted nor alluded to the Counter Affidavit.

The position of the law is that the Chamber Summons Application supported by Affidavit to the courts may be contested by either a preliminary

point of law or Counter Affidavit or both since the parties submissions in the courts are not evidence. The parties' submissions before the courts are only the reflection of the parties pleadings filed in the courts. Since the Appellant had not filed Counter Affidavit or preliminary point of law against that Application he was unprocedurally heard by the trial court, for he hadn't procedurally contested the Application. That is to say, in both matters of law and fact the Appellant did not contest the Application in the trial court.

The trial court also erroneously decided that the Defendant had no good cause for the delay. Paragraphs 3-5 of the Respondent's Affidavit are clear that the negligence was not on the Respondent's part but his Advocate's. The Appellate had no any evidence to contradict the Respondents' allegations. Hence the Court finds the Respondent's reasons for the delay worthy granting the Application for the extension of time. The trial court misguided herself in using the alleged irregularity, if any, as the main reason to grant the Application since there was a valid reason for the delay and she had no authority to decide on the alleged irregularity which touches, the root of the main suit, hence preempting the main suit.

The appeal is hereby dismissed for want of merit. The Respondent shall file her intended Application for setting aside the *ex parte* judgment within 30 days of this Ruling. The parties shall bear their own costs.



GEORGE M. MASAJU

**JUDGE**

2/11/2022