

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

PC. MATRIMONIAL APPEAL NO. 1 OF 2021

SECILIA J. MAKOYE APPELLANT

VERSUS

MALINGUMU H. MAYAYA RESPONDENT

(Appeal from the Ruling of the District Court of Sumbawanga at Sumbawanga)

(G. J. William, RM)

Dated 31st day of August 2020

In

Misc. Civil Application No. 15 of 2020 based on Matrimonial Appeal No. 4 of 2020 which
originated from Matrimonial Cause No. 63 of 2019 of Sumbawanga Urban Primary Court
at Sumbawanga

JUDGMENT

01/04 & 19/05/2022

NKWABI, J.:

This is an appeal against the decision of the District Court in Miscellaneous Civil Application No. 15 of 2020 which had its genesis from Matrimonial Appeal No. 4 of 2020 which in turn is based upon Matrimonial Cause No. 63 of 2019. The applicant had applied in the District Court for an order setting aside its dismissal order on Matrimonial Appeal No. 4 of 2020 dated 24 June 2020. To that end she was seeking restoration of the Matrimonial Appeal No. 4 of 2020. Unfortunately, to her of course, her plea for restoration of the Matrimonial appeal was turned down for reasons that one of her grounds

was false. Also, as she was not admitted in hospital she ought to have communicated about her sickness through a letter or an agent. In addition, the court was in dilemma as to which date she was actually treated. It is thus she is appealing to this court.

The appellant's grounds of appeal are:

1. That the trial court erred in law and fact when without taking into consideration strong evidence produced in Court by the herein appellant during the hearing of Misc. Civil Application No. 15 of 2020 decided an application to favour the Respondent unfairly.
2. That the District Court erred in law and fact when ignored the appellant's documentary evidence to proof as to why she defaulted to cause appearance to prosecute her appeal duly filed in Court against the decision of which are clear and self-explanatory. The copy of medical treatment is hereby attached for easy Court reference.

Replying to those grounds of appeal, the respondent that the decision of the District Court in dismissing the application was fair without favour and without undue influence because it was based on consideration of the

evidence. There was no evidence to support the application to justify her non-appearance in the application.

Meanwhile, at the hearing of this appeal, both the appellant and respondent appeared in person fending for themselves. In her submissions the Appellant contended that she skipped attending court as she was sick. The evidence that she was sick she was very serious sick and she used to live alone with a small child. She prayed this court for justice.

In reply submission, the Respondent argued that the appellant is telling falsehood. That hospital does not admit patients but she claimed that she was admitted, the documents were from a private hospital, that is why she was refused her claim, he observed. The respondent prayed her appeal be dismissed.

In her short rejoinder the Appellant declared that she was sick, it was the time of Corona leave. She added, she was very sick so she could not attend

hospital. She thought she was suffering from corona. She reiterated her prayer for justice.

That being the position of both parties, I had to revisit the proceedings of the District Court in the dismissed Matrimonial Appeal No. 4 of 2020 which reveal the proceedings as follows:

On 26/02/2020 Ndira, DRMi/c issued the initial order where the appellant was in appearance. The next date was 12/03/2020, thereafter the next was 25 March 2020. Then the matter was adjourned to 30 March 2020. It was also adjourned to 7th May 2020 followed by an adjournment to 18th May 2020, then adjourned to 03/06/2020 and finally on 24th June 2020 when the District Court dismissed the appeal for want of prosecution.

Admittedly, at that time when the appellant skipped attending court was at the heart of the pandemic and countries were battling the pandemic by taking drastic measures such as total or partial lock downs. Tanzania is not

an island. It battled the pandemic though with different measures according to its environment which included herbal treatments.

Now, courts are enjoined to decide with wisdom while taking into account the law. That was stated in **Samweli Msivangala v. Republic** [1980] TLR 319 Samatta, J., as he then was, stated:

"I venture to point out, without, I hope, any disrespect, that if the law were as the two courts below took or thought it to be, the man on the UDA omnibus would have been tempted to ask his neighbor: Why has the law parted company with common sense? I have always understood it to be one of the duties of courts of justice to strive, as far as is possible for the non-existence of friction between the law and common sense, so that the former may continue to enjoy the respect and obedience of the common man."

In this appeal, it is clear that the appellant skipped attending court at the time when everyone was fighting for survival when so little was known about COVID 19. In the District Court, in the application for setting aside the dismissal order, the appellant attached medical chits to substantiate her

sickness, the same were not accepted by the District Court. I think that was unfair to her. Attaching the medical chit was required and indeed the appellant complied as per **James Anthony Ifunda v Hamis Alawi**, Civil Application No. 482/14 of 2019, (unreported) (CAT) where it was held:

"In addition, the alleged sickness is not supported by a medical report or medical chits which could be acted upon by the Court. In the circumstances, I am satisfied that the first reason for the delay advanced by the applicant is untenable."

In the premises, I allow the appeal. I quash the decision of the District Court refusing her application for restoration of the Matrimonial Appeal No 4 of 2020 in the District Court. As she prayed for any other relief(s) the Court may deem fit and just to grant, I grant her a relief to the extent that her Matrimonial appeal No. 4 of 2020 is hereby restored. The District Court has to proceed with proceedings from it ended on 24th day of June 2020 preferably before a different Resident Magistrate of competent jurisdiction. The prayer by the respondent in this appeal that the appeal be dismissed is thus rejected. Each party to bear their own costs.

It is so ordered.

DATED at **SUMBAWANGA** this 19th day of May 2022.




J. F. NKWABI

JUDGE