

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISCELLANEOUS CIVIL APPLICATIONS NO. 7 OF 2022

(Originating from High Court in Original Jurisdiction)

**ORYX – JAMBO PETROLEUM
PRODUCT LIMITED**



APPLICANT

VERSUS

**ENERGY AND WATER UTILITIES
REGULATORY AUTHORITY (EWURA)
& ANOTHER**



RESPONDENTS

RULING

1st April, 2022

A. MATUMA, J.

When this application came for hearing today, the applicant's advocate was absent and had earlier on filed in the Registry his notice of absence on the ground that he is attending his sick grandmother at Mwanza. The notice is however silent as to how he is attending such sick grandmother. It is not disclosed whether the sick grandmother is in hospital either admitted or treated as an outpatient. So the notice is a dark container without any plain explanation as to what the learned advocate meant;

"Attending a sick grandmother"

This application was brought under certificate of urgency and had an ex parte prayer to restrain the respondents from closing down the applicant's retail outlet at Plot no. 91C Block "S" Uzunguni area within Shinyanga Municipality pending hearing of this application interparties for the same interim order pending maturity of statutory notice to sue the respondent and institution of the main suit.

I granted the prayer and ordered for the interim restraint order pending hearing of the application inter-parties. Application interparties was to be heard today.

It seems, the applicant after obtaining the ex parte order has been reluctant to prosecute this application. In his notice for leave of absence the learned advocate for the applicant suggested that this application be heard on 12th April, 2022. He has not explained as to whether on such date the alleged sick grandmother shall be able to stand in her own without necessarily the presence of the learned advocate. If she will stand on her own on such date, why was it not possible today. No explanation.

As the letter is clear that the alleged patient is a grandmother, the learned advocate ought to have let the court know whether there was no any other surrounding relative who could stand in his position for the better of the grandmother, and him to attend the court proceedings. What was so special for him against the whole family and or the whole clan of the said grandmother to the extend of the learned advocate failing to attend the court proceedings.

It is in that respect I agree with Mr. George Kalenda and Mr. Baraka Butoto learned State Attorneys that the learned advocate for the applicant to attend his sick grandmother is too remote unless there should have been clear explanation of his special role in such attendance.

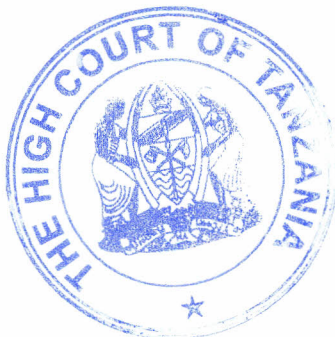
I also agree with the learned State Attorneys that even the absence of any officer from the applicant's office has to be construed against them that they have lost interest in the prosecution of this application.

The learned State Attorneys have also submitted that according to their knowledge, the chamber of the applicant's advocate has another advocate by the name Getrude Matesi whom they have met several times in several other cases by Kaunda & Company advocates. The learned advocate's notice is however stating that Mr. Kaunda is a sole advocate in the chamber. Be it he is a sole advocate in the chamber or there is another partner advocate is none of the business of the court. All what we want is the attendance of the parties or their recognized agents including advocates for progress of the suits and final determination of the rights of the parties without any undue delays.

It is my firm finding that, the advocate's letter has been drafted to fraudulently procure an adjournment without any good cause. I therefore reject the proposal to adjourn this matter and I agree with learned State Attorneys that this application deserves to be dismissed for want of prosecution.

I accordingly dismiss the same for want of prosecution with costs.

It is so ordered.




A. MATUMA
Judge
1/04/2022