

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM SUB REGISTRY)  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 111 OF 2022**

*(Originating from Civil Case No.214 of 2018 )*

**TABITHA MARO** ..... **APPLICANT**

**VERSUS**

**RADDY FIBRE SOLUTION LIMITED** ..... **RESPONDENT**

**RULING.**

**S.M. MAGHIMBI, J:**

The application beforehand was lodged under the provisions of Order IX Rule 3 of the Civil Procedure Code [Cap. 33 R. E. 2019] ("the CPC"). The applicant is moving this court to set aside a dismissal order in respect of Civil Case No. 214 of 2018, an order dated 31<sup>st</sup> July. 2020. The application was supported by an affidavit dated 16<sup>th</sup> March, 2022 deponed by Mr Hope Paul and Mr. Fredy Joseph Abachi learned advocates representing the applicant.

Brief background of the matter is that on the 30<sup>th</sup> day of July, 2020, this court (Hon. Rwizile, J) dismissed Civil Case No. 214 of 2018 for want of prosecution. The dismissal order was made in the presence of Mr. Fredy Joseph Abachi learned Advocate who was holding brief for Mr. Sinare

Zaharani. The applicant was aggrieved by the dismissal order and has filed the instant application praying for this Court to set aside the dismissal order so that the matter can proceed on merits.

The application was disposed by way of written submissions. Dr. Alex Nguluma, learned advocate filed the submissions on behalf of the applicant while Mr. Juma Nassoro fended for the respondent.

In his submissions to support the application, Dr. Nguluma submitted that the requirement of the law is that for the Honourable Court to set aside its dismissal order made for want of prosecution, the Applicant must demonstrate and adduce sufficient reason to move the Honourable Court to do so. He pointed the court to paragraphs 12,13,14,15,16,17,18 and 19 of Hope Paul's affidavit and paragraphs 3,4,5,6 and 7 of the affidavit of Fredy Joseph Abachi in support of this application where he emphasised that the reasons were demonstrated. He then submitted in the impugned Ruling, the Court ruled that:

*"the matter is in Court for so long. Mr Zaharani who represents the plaintiff has not appeared since I took over this case, it was called for hearing on 25/2/2020, 9/3/2020, 2/4/2020, 28/5/2020, 18/6/2020. This is fine time and today is sixth time states are with no knowledge on the matters. It has been for ex-parte*

*hearing and since that, the matter cannot be heard by reason of failure to prosecute it.”*

Dr. Nguluma then submitted that on 25<sup>th</sup> February, 2020 the plaintiff was present in court for purposes of making an appearance. That having not heard the matter being called, several follow ups were made, and was informed that the matter been transferred from Hon. Demello, J to Hon. Rwizile, J and that the next appearance date is yet to be scheduled. He made follow ups with the Court clerk to obtain the date and they were then informed that the matter has been fixed for hearing on 2<sup>nd</sup> April, 2020. That on 2<sup>nd</sup> April, 2020 Ms. Hope Paul appeared before the Court when the case was called for hearing pursuant to the previous order of the court, whereas the Honourable Court was of the position that it is yet to deliver its substantive ruling following the complaint letter that was filed by the Respondent’s Counsel herein against the said order, hence not able to proceed with the hearing and fixed the matter for mention on 28<sup>th</sup> May, 2020.

Dr. Nguluma went on submitting that as part of measures taken by the Court to avoid spread of Covid-19 pandemic for matters fixed for mention, next scheduled dates for appearance were communicated by court clerks. He hence argued that as such, on all occasions, communication between their officers and the court clerk was that the

matter is still fixed for mention pending delivery of the ruling arising from the Respondent's application for extension of time to file a written statement of defence and vacation from an *ex-parte* order entered in 30<sup>th</sup> July, 2020.

He went on submitting that on 30<sup>th</sup> July, 2020 an appearance was made in Court by Fredy Joseph Abachi whereas in their knowledge the matter was coming for mention and surprisingly the Honourable Court advised otherwise that the same was fixed for hearing. He submitted further that Mr. Fred Joseph Abachi not being conversant with the matter, prayed for a short adjournment to communicate with Mr. Sinare Zaharan and advise way forward, prudently as it is equitable and just for proper representation of the client basing on that circumstance, the said prayer was rejected and Hon. Rwizile, J proceeded to dismiss the case for want of prosecution.

He went on submitting that it is trite law that a case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial, or failing to take certain specified actions of which the party had notice. He emphasized that on all occasions, the Applicant herein has been attending court in a manner explained above. Further that the Applicant has not in any manner

neglected or rather failed to prosecute the matter except that it is because of some miscommunication factors that led to the application at hand. Be it in the awareness of the Applicant that the matter was set for hearing appearance would have been duly made and proceed to hear the matter most especially that the same was to proceed *ex-parte* against the Respondent. That despite of that, appearance was duly made on the date when the Honourable Court dismissed the matter.

He supported his argument by citing the case of **Sadru Mangalji V Abdul Aziz Lalani & Others (Misc Commercial Application No. 126 of 2016)** where the Court held that;-

*"A court can dismiss a matter for want of prosecution where the person who initiated the court action does not take active steps to pursue the case in court such as not appearing in court. The court dealt with a case where the lawyer did not appear before court on the date for hearing."*

Turning back to this case, he submitted that the Honourable Judge erred in law in issuing a dismissal order by unreasonably not affording the Applicant his constitutional right to be heard. He then referred this court to the case of **M/S Darsh Industries Limited V M/S Mount Meru**

**Millers Limited (Civil Appeal No. 144 Of 2015) 2016 TZCA 144;**

where the Court held that:

*"the trial court had failed to uphold the appellants right to be heard when it arrived at its decision and therefore violated a constitutional right."*

He also cited the case of **IPTL V. Standard Chartered Bank (Hong Kong) Ltd, Civil Revision No. 1 of 2009** (unreported) where the legal jurisprudence on the right to be heard was expounded further as the Court stated that:

*"No decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties so as to adversely affect the interest of any person without first giving him a hearing according to the principles of natural justice."*

In reply, Mr. Nasoro submitted that in both the two affidavits, the applicant did not disclose sufficient reasons for this court to set aside the dismissal order. That the applicant did not enter appearance for no good reasons and that the records show that it was the counsel for the respondent who was appearing before the court. In rejoinder, Dr.

Nguluma reiterated his submissions that the applicant always prosecuted her case and still has interest to do so.

Having considered the submissions of the parties, I find that the matter should not detain me much. Indeed as per the records, when the matter was dismissed on 30<sup>th</sup> July, 2020, the applicant was represented by Mr. Fred Joseph Abachi whom not being conversant with the matter, prayed for a short adjournment to communicate with Mr. Sinare Zaharan. However, as it is apparent on the records, the Honorable Judge took notice of the number of times that the applicant had been missing in court and sequenced the times in his order. Missing a court for the four consecutive times on 25/2/2020, 9/3/2020, 2/4/2020, 28/5/2020, 18/6/2020 and having appeared with an advocate who gives an excuse of not being conversant with the matter is nothing but disrespect to the court.

Even if, for the sake of argument, we were to believe that the dates were given by the Court Clerk, on the date that Mr. Abachi appeared in court, the applicant should have known, by duty of inquiring, that the matter was coming for ex-parte hearing hence she should have prepared herself. Otherwise, it seems to me that the advocates were not taking court proceedings serious and that is why they come with issues like "*I am not conversant with the matter*". One would ask if the

advocate "is not conversant with the matter" and knowing that the matter comes for hearing, why would you still deliver yourself in the mercy of the court. Why would you expect the court to pamper you by adjourning the matter simply because who went there *"is not conversant with the matter"*.

It is a known principle of law that litigations must come to an end. In order for litigations to come to an end there must be concerted efforts from both the litigants and the courts. If litigants find excuses to have matters adjourned at the expense of court's time, we will lose focus not only of the bigger context of the administration of justice, but also the vision of the judiciary, *timely justice for all*.

Having made the above observations and findings, this court find that the applicant has failed to adduce sufficient reasons for her unpreparedness and unjustified absences in court which led to the dismissal of her suit. In the upshot, this application is hereby dismissed with costs.

Dated at Dar es Salaam this 24<sup>th</sup> day of March, 2023.



A handwritten signature in blue ink, appearing to be "S.M. Maghimbi", is written over a horizontal dotted line.

**S.M. MAGHIMBI**  
**JUDGE.**