

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISC. CIVIL APPLICATION NO.05 OF 2023**

*(Arising from the Order of the High Court of Tanzania at Shinyanga before Hon. A. Matuma, J dated on 27<sup>th</sup> February 2023)*

**CHRISTINA EMMANUEL MANDAGO.....APPLICANT**

**VERSUS**

**EMMANUEL SHABAN MAKALA .....RESPONDENT**

***11<sup>th</sup> July 2023 & 21<sup>st</sup> July 2023***

**RULING**

**F.H. MAHIMBALI, J**

The applicant herein, filed Pc. Matrimonial Appeal No. 02 of 2022 challenging the decision of the District Court of Shinyanga. The matter was fixed for hearing on 27<sup>th</sup> February 2023 before Hon. Matuma J, in which it was dismissed for want of prosecution, hence this application for restoration.

During the hearing of this application the respondent enjoyed legal services of Mr. Geoffrey Tuli, learned advocate while the applicant appeared in person.

The application by the applicant was objected on the reasons that the applicant's application is time barred pursuant to item 9 part III of the

Schedule of the Law of Limitation Act, Cap 89 RE 2019. After a thorough discussion with the parties, the Respondent's Counsel, abandoned his preliminary objection.

The applicant in supporting her application, first prayed her affidavit in support of her application be adopted to form part of her submission and added that the dismissed appeal be restored.

On the side of the respondent, Mr. Tuli resisted the application on the reasons that the applicant has repeatedly been absconding appearance to the Court. This is the reason led Hon. Matuma J, to dismiss the appeal.

As per records, the applicant actually attended to this Court on 30/5/2022. On 22/7/2022/ the applicant was absent without notice, also on 08/11/2022, she did not attend to Court without prior notice. Thus, the reasons why on 27/02/2023 the appeal was dismissed is because of the same tendency of absenteeism but the respondent in all times had been attending attended before the Court.

Mr. Tuli further submitted that the attendance of the court is examined through Court records and not otherwise. Mr. Tuli prayed the application be dismissed for want of merit.

The applicant on rejoinder, reiterated what she submitted in chief. She further submitted that she had never missed attendance of the Court since the filing of the appeal. At all time she attended the Court and she had been appearing before the office of the Deputy Registrar, she wonders how she was recorded absent. She then prayed for her appeal be restored.

Upon a thorough scanning of the applicant's application and the reasons contained into her affidavit and the ruling of this court (by my brother Matuma J) vide the former Pc. Matrimonial Appeal No.02 of 2022 dated 27<sup>th</sup> February 2023, it is undisputed that the former appeal was timely filed.

The applicant alleges that she has never missed Court's attendance even a single day and thus when the matter was for fixed for hearing on 27/02/2023 she was present though came late, she also averred that on 25<sup>th</sup>/02/2023, she attended at Kambarage Health Centre for checkup and therefore she was on medication yet she struggled and managed to come to the Court on 27/2/2023 and find that her appeal was dismissed.

On the side of the respondent, Mr. Tuli objected on ground that it has been normal tendency of the applicant. For several times she never



attended the Court without due notice which attracted the dismissal of the appeal.

Evaluating the arguments made by both parties, the main point for consideration and determination is whether sufficient reasons have been given to warrant the prayer sought.

In my firm view, I have noted that, the Respondent's Counsel does not resist the reasons of illness as advanced by the applicant. Instead, the respondent's counsel is against with bad habit of the applicant for not attending the Court without due notice which led for dismissal of her appeal.

It is a settled law that, seeking to set aside a dismissal order of the Court, a party should furnish the court with sufficient reasons for non-appearance when the case was called on for hearing on the date of dismissal. Based on the above stand, the case of ***Shocked and Another Versus Goldschmidt and Others (1998) 1ALL ER 372***, it was held that, the applicant's conduct before the alleged non-appearance should be taken into consideration in application of this nature.

This court has no doubt on the promptness steps taken by the applicant on the restoration of her appeal case.

The case reported in **NLR 2002 Civil 663 Muhammad Faisal v. Muhammad Iqbal**, in which the suit was dismissed for non-prosecution but it was restored with the observation that law favors adjudication of disputes on merits.

In the case of **Beatus Laurian Ndihayе versus Mariam Kitoela, Miscellaneous Civil Application NO.6 of 2021**, the court held that

*" The applicant's only reason advanced is illness. I am well aware that as of late there are decisions which are to the effect that illness constitutes sufficient cause for extension of time. However, such illness must be sufficiently proved. Looking at the affidavit filed in support of the application, the applicant has attached to the affidavit a letter from the traditional healer indicating that he was admitted at his place where he was receiving treatment and was later discharged after he was well. That traditional healer further proved his professionalism by attaching a copy of his Certificate of incorporation No. A.91041 issued on 29/01/2019. The reason advanced by the applicant suffices to be sufficient cause upon which this court can exercise its discretion"*

The applicant among other reasons for restoration was illness. The affidavit by the applicant is enclosed with the so-called OUTPATIENT RECORD, and sealed with a seal from Kambarage Health Centre Shinyanga, where the applicant alleged to have attended for health check-up and diagnosed, the ground which was not objected by the either party.

In view of the above, I consequently, by these reasons, hold that, the applicant has managed to show sufficient reasons for the grant of restoration order. The application therefore succeeds and the dismissed Pc. Matrimonial Appeal No. 02 of 2022 is hereby restored.

It is so ordered.

DATED at SHINYNANGA this 21<sup>st</sup> day of July, 2023.



**F.H. MAHIMBALI**  
**JUDGE**