

**IN THE HIGH COURT OF THE UNITED OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

PC. CIVIL APPEAL CASE NO. 55 OF 2022

(Arising from Misc. Application No. 13 of 2022, original appeal No. 4 of 2022 at Nyamagana District Court)

SHABANI MHENGA.....APPELLANT

VERSUS

FILEMON ANDREW ERNEST.....RESPONDENT

JUDGEMENT

14th & 14th February, 2023

Kilekamajenga, J.

The appellant approached this court for justice challenging the decision of the District Court of Nyamagana. The brief facts of the case are as follows; the appellant sold a piece of land to the respondent which did not belong to him. The respondent paid Tshs. 6,000,000/= as the purchase price of the land. The respondent later claimed back his money from the appellant by filing a Civil Case No. 21 of 2022 in the Primary Court of Nyamagana. When the appellant appeared before the trial court, he admitted the claim and promised to pay back the money within thirty (30) days and he was so ordered.



Later, the appellant appealed to the District Court of Nyamagana vide Civil Appeal No. 4 of 2022. But, the appellant failed to prosecute his case and the appeal was dismissed for want of prosecution. He applied to set aside the dismissal order through Misc. Application No. 13 of 2022 but, his application was dismissed for want of merit. He has now advanced two grounds to challenge the ruling of the District Court of Nyamagana that dismissed his application for restoration of the appeal. Before this court, the appellant coined two grounds thus:

- 1) That, the trial Magistrate erred in facts for ruling that, the appellant was not sick since on the morning of 3rd February, 2022.*
- 2) That, the trial Magistrate erred in law and fact for failure to consider and analyse properly the medical report annexed as proof of illness of the appellant.*

In defending the appeal before this court, the appellant appeared in person and un-represented, whereas the respondent, who was absent, enjoyed the legal services of the learned advocate, Mr. Adam Robert. In his oral submission, the appellant informed the court that he failed to attend to the case as he was indisposed. He urged the court to consider the reasons for his failure to attend to the case and allow the appeal. The learned counsel for the respondent supported the decision of the District Court arguing that the appeal was dismissed on 03/02/2022 in the morning while the medical

report that accompanied the appellant's application showed that, the appellant became ill on 03/02/2022 at night hours. That means, the appellant was well and fell sick later after the appeal was dismissed. The counsel urged the court to dismiss the appeal with costs.

When re-joining, the appellant insisted that he was sick on the day when the case came for hearing and therefore failed to appear before the court.

Having considered the rival arguments from the parties and other information contained in the court file, it is evident that, the appellant's appeal was dismissed for want of prosecution on 03/02/2022. While trying to set aside the dismissal order, the appellant annexed a medical report indicating that, he was sick on that day. However, the content of the medical report is worth nothing. It reads that;

"Patient named above was well till night when gradual onset experienced severe abdominal pain, joint pain and headache"

In my view, the words are coached as if the appellant was trying to secure evidence to support his absence in court. No wonder the District Court failed to restore the dismissed appeal. Also, the nature of the case purely suggests that the appellant is trying to use the court process as a shield to

evade his due responsibility of satisfying the decree reached on appellant's admission. I find no merit in the appeal and dismiss it with costs. Order accordingly.

DATED at **Mwanza** this 14th day of February, 2023.



Ntemi N. Kilekamajenga.
JUDGE
14/02/2023



Court:

Judgment delivered this 14th February 2023 in the presence of the appellant and the counsel for the respondent, Mr. Adam Robert. Right of appeal explained to the parties.



Ntemi N. Kilekamajenga.
JUDGE
14/02/2023



