

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

**MISC. CIVIL APPLICATION NO.119 of 2022**

*(Arising from Misc. Civil Application No. 55 of 2022 of 30.08.2022)*

**ANDREW B. LIMBU .....APPLICANT**

Versus

**LIBERT DEOGRATIUS ZELAMLA .....RESPONDENT**

**RULING**

*Dec. 7<sup>th</sup>, 2022 & Feb. 10<sup>th</sup>, 2023*

**Morris, J**

This Court, on August 30<sup>th</sup>, 2022 dismissed miscellaneous civil application no 55 of 2022 for want of prosecution. Aggrieved by such decision, the applicant herein, filed the present application seeking to set aside the subject dismissal order. His application is supported by the affidavit of Andrew Buluda Limbu, the applicant. However, the respondent does not support the application. He has filed his counter affidavit sworn by him.

The facts of this matter, as extracted from parties' affidavits and court records, are straightforward. On August 9<sup>th</sup>, 2022 parties, by mutual consent, prayed for adjournment for hearing of the above application to August, 30<sup>th</sup>, 2022 at 8:00 hours. On the latter date, it is only the

Respondent who entered appearance. Consequently, he successfully prayed for and was granted dismissal order against the application. The applicant deposes that he did not enter appearance because the case was called an hour earlier than the previously set time. That is, he arrived at the Court around 8:30 hours to attend to his case which was fixed to proceed at 9:00 hours. He later realized that the same had been called and dismissed. The opposing respondent is vehement that the Court had fixed hearing to commence at 8:00 hours and that is why he was in attendance at that time.

During hearing, the applicant appeared in person, unrepresented; while Mr. Sileo Mazula, learned advocate, appeared for the respondent. The rivalry submissions, after each side prayed to adopt respective affidavit, are summarized as follows: The applicant submits by almost reiterating the depositions in his affidavit. That, on the day the matter subject of this application was adjourned, parties were ordered by the Court to appear on the subsequent date at 9:00 hours. He adds that he was timely by a half an hour early. But he did not hear his case being called. He also submitted that he did not arrive earlier than that because of challenges associated with public transport and geographical challenges towards the Court premises from his residence.

It is his further submission that upon realizing that the case had been dismissed, he hurriedly went to the Deputy Registrar's office to lodge his complaint only to be advised to make formal application. According to him, the dismissal order was procured by the opposite party on an unjust basis. Finally, he prayed that the application should be allowed for his justice is at stake.

To counter the application, the respondent, through Advocate Mazula, submitted that the applicant did not give any or sufficient reason for his absence or delay to enter appearance on 30/08/2022. To him, the application should have been supported by evidence of his absence. He challenged the main reason in the affidavit that the case was scheduled to commence at 9:00 hours while records are clear that parties had fixed the hearing to take off at 8:00 sharp. To him, when a party disobeys the Court order, he does so at his detriment. He also submitted that such disobedience is illegitimate. He, thus, prayed that the application should not be granted and the applicant should be condemned to pay costs.

I have taken adequate interest in the applicant's depositions *vis-à-vis* the record in order to check whether or the present application has the requisite merit. In his five-paragraph affidavit, the applicant does not state - even by passing, the ground supporting his non-appearance. Indeed, all the depositions are alleging that the Court had previously fixed

the matter to proceed at 9:00 hours only to start at 8:00. That omission notwithstanding, the subject application was dismissed on August 30<sup>th</sup>, 2022 but the present application was lodged with this Court on October 20<sup>th</sup>, 2022. That is, about 51 days after the impugned dismissal order. This court, therefore, finds that the applicant has been less vigilant in prosecuting his cause. This is not to mention, that even the dismissed application was seeking to extend time for him to appeal against the subordinate court's decision.

Further, though the applicant submitted that the matter had been fixed to proceed with hearing from 9:00 hours, the records of this Court indicate that the case was fixed for hearing from 8:00 hours. The records of the Court have sufficient sanctity and take precedent over parties' records. That is the law.

Hence, much as the applicant is arguing that he was late by few minutes due to geographical and transport challenges, such assertions are not supported by any evidence or depositions. They are essentially afterthoughts. Submissions are never a substitute of evidence. Law holds so. That is, statements or submissions from the bar or parties are essentially the reflection of the general opinion over the parties' case, and are therefore not evidence. See, for instance, ***The Registered Trustees of the Archdiocese of Dar es Salaam v The Chairman, Bunju***

**Village Government & 11 Others**, Court of Appeal Civil Appeal No. 147 of 2006; **Bish International B.V. & Rudolf Teurnis Van Winkelhof v Charles Yaw Sarkodie & Bish Tanzania Ltd**, Land Case No. 9 of 2006; and **Rosemary Stella Chambejairo v David Kitundu Jairo**, Court of Appeal (Dar Es Salaam) Civ. Reference No. 6 of 2018 (all unreported).

The above conclusions and reasons having been given; this application does not pass the just-test of law. I dismissed it. Considering the nature of this matter, no party is awarded costs.

It is so ordered.



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**C.K.K. Morris**  
**Judge**  
**February 10<sup>th</sup>, 2022**

Ruling delivered in presence of Mr. Andrew Limbu, the applicant and Advocate Sileo Mazula, learned advocate for the respondent.

A handwritten signature in blue ink, appearing to read 'C.K.K. Morris', written over a large, stylized blue scribble.

**C.K.K. Morris**  
**Judge**  
**February 10<sup>th</sup>, 2022**