

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

AT DAR ES SALAAM.

MISCELLANEOUS CIVIL APPLICATION NO. 161 OF 2023

(Originated from Misc. Civil Application No. 43/2022)

**LUCY DIU SIMTOWE (appearing as appointed manager of
WATSON MAND SIMTOWE, a person of unsound mind).....APPLICANT**

VERSUS

KENEDY SIMTOWE.....1ST RESPONDENT

MRS. JOYCE SIMTOWE W/O MWAKAJUMBA.....2ND RESPONDENT

RULING

Date of last order: 29/02/2024

Date of Ruling: 22/03/2024

A.A. MBAGWA, J.

This is an application to set aside a dismissal order made by this Court (Hon. Nkwabi, J) on the 13th day of March, 2023 in Misc. Civil Application No. 43 of 2022 (the application) and restoration of the same. The Court has been moved by way of chamber summons made under Order IX Rule 6(1) and Section 95 of the Civil Procedure Code, [Cap 33 R.E 2019]. To be specific, the applicant prays for the following orders;

1. That this Honourable Court be pleased to vacate its order of 13th day of March 2023 dismissing Misc. Civil Application No. 43 of 2022



for want of prosecution, restore the said application and fix the date of hearing inter parties on merits.

2. Any other order this Honourable Court shall deem fit and just to grant.

3. Costs to follow the events.

The application is supported by an affidavit deposed by Lucy Diu Simtowe, the appointed manager of one Watson Mand Simtowe (a person of unsound mind). The application was not contested as the respondents failed to file a counter affidavit even after an extension of time. As such, the matter was heard *exparte*.

The facts of the matter as gleaned from the applicant's affidavit and its attachments may briefly be stated as follows: the applicant instituted before this Court Misc. Civil Application No. 43 of 2022. The said application came before the Deputy Registrar on 10th November 2022. Thereafter the application was adjourned and fixed for hearing on the 13th day of March, 2023 before Hon. Nkwabi, J. It was averred that the applicant inadvertently recorded 23rd March 2023 as a hearing date instead of 13th March 2023 as pronounced by the Deputy Registrar. Thus, on the fixed day for the hearing i.e., 13th March 2023, the applicant did not appear as a result the application was dismissed for want of prosecution.

A handwritten signature in black ink, appearing to be 'Amadi', with a stylized flourish underneath.

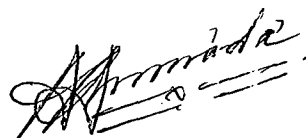
The applicant appeared on the 23rd of March 2023, only to be told that the matter was, on the 13th day of March, 2023, dismissed for want of prosecution.

Consequently, on the 28th day of March 2023, the applicant lodged a letter requesting a certified copy of the dismissal order for the purpose of instituting the present application although, the said letter was not attached to the affidavit. Thus, on the 14th of April 2023, the applicant filed the present application praying for the reliefs as indicated above.

The applicant's main ground for setting aside dismissal order as contended under paragraph 8 of the affidavit is mistaken recording of the hearing date. In view thereof, she prays the Court to allow the application and consequently restore Misc. Civil Application No. 43 of 2022.

On the 29th day of February, 2024, when the application came for hearing, Mr. Barnabas Lugua, learned advocate appeared for the applicant. Both respondents did not enter appearance, thus, I ordered the hearing of the application to proceed *ex parte* against the respondents.

Submitting in support of the application, Mr. Lugua did not have much to tell the court rather he reiterated the contents of the applicant's affidavit in support of the application. Based on the grounds stated in the affidavit together with the submission, Mr. Lugua prayed the Court to grant the application.



I have thoroughly scanned the applicant's affidavit, submissions and the court record in Misc. Civil Application No. 43 of 2022. It is clear that the applicant was attending in court on every day the matter was called on except on the 13th day of March 2023 when the same was dismissed. This explains that the applicant was diligent in pursuing her case but due to human frailty, she mistakenly recorded the hearing date. After considering the circumstances obtaining in this matter I am satisfied that the applicant's appearance on 13/03/2023 was prevented by sufficient cause. Thus, the applicant has demonstrated a good reason for this Court to set aside its dismissal order. In the event, it is my findings that it is in the interest of justice to grant the application. Thus, the dismissal order in Misc. Civil Application No. 43 of 2022 dated the 13th day of March 2023 is hereby set aside and the said Misc. Civil Application No. 43 of 2022 is hereby restored. No order as to costs.

It is so ordered.

The right of appeal is explained.

Dated at Dar es Salaam this 22nd day of March 2024



A.A. Mbagwa
A.A. Mbagwa

JUDGE

22/03/2024