

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SUB REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. CIVIL APPLICATION NO. 1448 OF 2024

(Arising from Civil appeal no 31 of 2023 before High court of Tanzania, Probate appeal No 11/2022 Bariadi District court and Probate and Administration Cause No 3/2022 from Bunamhala Primary court)

NZUMBI KIDAYI.....APPLICANT

VERSUS

JULIANA KIDAYI.....RESPONDENT

(The administratrix of the estate of the deceased Kidayi Kija)

RULING

13th & 25th March 2023

MASSAM, J.:

The applicant herein brought this application to this court to set aside the dismissal order and re-admit Civil Appeal No. 31 of 2023 to be heard on merit. The application was brought under **Rule 17 of the Civil procedure (Appeals in proceedings originating in Primary Courts) Rules GN No 312 of 1964**). It was supported with an affidavit of Mr. Nzumbi Kidayi, and opposed by one Juliana Kidayi.

During the hearing of the application both parties appeared in persons, unrepresented. The application was heard orally.

Supporting the application, the applicant submitted that the day his case was coming for hearing he was told the same will be heard at Bariadi but he was not aware of it, and the case was dismissed for his non appearance that's why he is praying for restoration of his appeal. In her reply respondent opposed the applicants application by stating that the reasons given by the applicant was not sufficient for restoration of the said appeal. She added that she is praying for costs of this case as he was always attending to court while applicant was not attending. In his rejoinder applicant insisted this court to restore his suit.

Having heard the submission of the applicant, the issue for determination is **whether the application has merit or not.**

It is a settled principle of law that in an application seeking to set aside a dismissal order for non-appearance the applicant has to adduce grounds for failure to enter appearance and the said grounds must be sufficient cause. In **Shamsudin Jiwan Mitha vs Abdulaziz Ali Ladak** (1960)1 E.A. 1054 it was held inter alia that:

"To succeed in an application for reinstatement of a suit or appeal, the applicant has to show that he did not appear and that he was prevented from appearing by sufficient cause."

It has to be noted that the good cause to warrant restoration of the case is not provided but it depends with the circumstances of each and every case as it was highlighted in the case of **Jacob Shija vs M/s Regent Food & Drinks limited and The Mwanza city council**, civil application No 440/08 of 2017 court of Appeal at Mwanza (unreported) among other things the court stated that '

"what amount to good cause cannot be laid by any hard and fast rule but are dependent upon the facts obtaining in each particular case. That is each case will be decided on its own merits-----"

Coming to this present case the applicant informed this court that he was not aware of the date of this case coming to court as he was told that the matter was planned to be heard at Bariadi.

This court perused this file and find out that the said appeal was brought to court for the first time on 8/6/2023 the said date the

applicant/appellant was absent, and he never appeared in court for five times without good reasons from June to November when this appeal was dismissed for his non appearance. No proof was brought for his non appearance to court in all five times.

I have considered the reason advanced by the applicant; from the outset, I wish to state that I am not convinced by the said reasons that applicant was not aware of the hearing of his case for six months as he was the one who brought that appeal to court so it was his duty to make a follow-up.

Therefore this court is in support of the respondent submission that the applicant failed to bring the sufficient reasons to his appeal to be re admitted. I then find the major issue posed herein above negatively to the effect that the application has no merit. Application for re admission of civil appeal No 31/2023 is hereby denied and it is consequently dismissed with costs. It is so ordered.

DATED at SHINYNGA this 25th day of March 2024



R.B. Massam

Judge

25/3/2024