

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB REGISTRY OF MANYARA**

**AT BABATI**

**MISC. CIVIL APPLICATION NO. 29 OF 2023**

*(Arising from Civil Appeal No. 9 of 2023 in the High Court (T) - Manyara Sub-Registry, Originating from District Court of Kiteto at Kibaya Civil Appeal No. 3 of 2023, from Civil Application No. 42 of 2022 at Kibaya Primary Court)*

**SAID SUFIANI MOHAMED.....APPLICANT**

**VERSUS**

**BARAKA LEHALEY SIRIA.....RESPONDENT**

**RULING**

*15<sup>th</sup> & 22<sup>nd</sup> January 2024*

***Kahyoza, J.:***

**Said Sufiani Mohamed**, the applicant, instituted an appeal against **Baraka Lehaley Siria**, the Respondent, which this Court fixed for hearing on the 1<sup>st</sup> day of August, 2023. On the date the said appeal came for hearing, only the respondent entered appearance. **Said Sufiani Mohamed** who was the appellant did not enter appearance, and for that reason, the Court dismissed the appeal for want of prosecution.

Aggrieved, **Said Sufiani Mohamed** filed the instant application on the 23<sup>rd</sup> day of August 2023, seeking this Court to re-admit the appeal. He filed an affidavit to support the application, where he deponed that,

he was absent when he was required to appear before this Court as he delayed due to transport hiccup. Item 5 of his affidavit reads as follows: -

*"That on the hearing date 01/08/2023 appellant arrived at 10:20 forenoon hours ready for the court session where he was informed by presiding judge, that the case has been dismissed for want of prosecution, whereupon appellant raised concern that he didn't come late deliberately few minutes before commencement started but it was because of transport that delayed me inches away of time. "*

The respondent filed a counter affidavit disputing **Said Sufiani Mohamed's** averment. He prayed the applicant to strict prove the allegations.

**Has the applicant disclosed sufficient reason for non-appearance?**

It is evident that, the applicant adduced only one reason for non-appearance, which was transport setback on his way to the Court. During the hearing, the applicant, who was not represented, had nothing to add. On the other side, Mr. Basiha, advocate for the respondent, who appeared virtually was emphatic that the applicant had the habit of absenting himself from the court. I examined the records, in need it is not the first time for the applicant to absent himself from the court. He was absent in the district court when the appeal was fixed for hearing as result the

appeal was dismissed for want of prosecution. I am not convinced the applicant delayed for **sufficient cause**. He knew that he could not walk from his place to the court due to the distance between the two places. To reach the Court, the applicant had to take transport, be it private or public. I am not convinced that transport hiccups was the reason for the applicant's delay to enter appearance. He knew that the appeal was scheduled for hearing on the 1<sup>st</sup> day of August, 2023 at 10:00 hrs, he ought to have ensured he took early transport. Not only that also but also, he did not explain what happened that caused him to delay or to fail to enter appearance. I find no merit in the applicant's application.

I wish to point out that the applicant was seeking to restore an appeal which originates from the primary court, which is regulated by **the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules**, G.N. No. 312 of 1964 (the Rules) and not the Civil Procedure Code, [Cap. 33 R.E. 2019] (the **CPC**). Thus, the application seeking to restore the dismissed appeal was required to be instituted under rule 17 of the **Rules**. Rule 17 of the **Rules** requires the applicant whose appeal was dismissed for non-appearance to disclose sufficient cause of his non- appearance. It provides: -

*"17. Re-admission of appeal dismissed for default Where an appeal has been dismissed under subrule (2) of 13 **in default of***

***appearance by the appellant, he or his agent may apply to the appellate court for the re-admission of the appeal; and if the court is satisfied that he was prevented by any sufficient cause from appearing either personally or by agent when the appeal was called on for hearing it may re-admit the appeal on such terms as to costs or otherwise as it thinks fit. "(Emphasis is added)***

In the end, I find that the applicant has miserably failed to give **sufficient cause** for his non-appearance. Consequently, I dismiss the application with costs.

It is ordered accordingly.

Dated at **Babati** this 22<sup>nd</sup> day of **January**, 2024.



A handwritten signature in black ink, appearing to read "John R. Kahyoza", written over a horizontal line.

**John R. Kahyoza,  
Judge**

**Court:** Ruling delivered in presence of parties. B/C Ms. Fatina Heymale present.

A handwritten signature in black ink, appearing to read "John R. Kahyoza", written over a horizontal line.

**John R. Kahyoza,  
Judge**

**22.01.2024.**