

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS CIVIL APPLICATION NO. 5431 OF 2024

(C/F Civil Revision No. 2 of 2024 High Court of Tanzania, Manyara Sub Registry and Civil Case No. 01 of 2023 of the Resident Magistrate Court of Babati)

JOHN CLARET MDENYE.....APPLICANT

VERSUS

- | | | |
|--|---|--------------------|
| 1. UCHUMI COMMERCIAL BANK LTD..... | } | RESPONDENTS |
| 2. REGIZ COMPANY LTD..... | | |
| 3. TANFIN CONSULTANT (E.A) LIMITED..... | | |
| 4. PETER MALYA..... | | |

RULING

2nd and 30th May 2024

MIRINDO, J.:

This is an application to set aside the dismissal order that saw Civil Revision No 83 of 2024 dismissed for want of prosecution on 12 March 2024. On that date I dismissed the Civil Revision for non-appearance of the applicant. His main ground for seeking to set aside the dismissal order is that on that date the

applicant's counsel, Mr Richard Evance Manyota, had a sick child whom he took for medical checkup at Kaloleni Health Center in Arusha.

At the hearing of the application, Mr Manyota, learned counsel appeared for the Applicant and the respondent was represented by Mr Advocate Ibrahim Komu, learned counsel. At the hearing, Mr Manyota, learned counsel, sought leave to adopt his supporting affidavit as part of his submission. He asked the Court to set aside the dismissal order and allow the Civil Revision to be heard inter parties. He referred this Court to the Court of Appeal's decision in **Loshilu Karaine and Others v Abraham Melkizedeck Kaaya** (Civil Appeal no. 534 of 2020) [2024] TZCA 93 where it was held that illness is a sufficient reason to set aside the dismissal order.

In opposition, Mr Komu, learned counsel argued that the medical report was undetailed on material particulars. The affidavit did not explain how his child was ill and how that illness necessitated counsel to take the child to the hospital and for that reason he failed to appear before the Court. The medical report does not indicate who treated the child. It is in form of a letter of the clinic he attended. It only contains a rubber stamp. Anyone can stamp a document.

After examining the applicant's affidavit and the medical report, I am satisfied that the applicant has established sufficient cause of illness of the child

that he took for medical treatment on the fixed for hearing of Civil Revision No 83 of 2024.

The application is granted and hearing inter parties to proceed as on the date to be fixed from the date of this ruling. Costs in the cause.

DATED at BABATI this 29th day of May, 2024




F.M. MIRINDO
JUDGE

Court: Ruling delivered this 30th day of May, 2024 in the presence of the applicant's counsel, Richard Manyota also holding brief for the respondents' counsel, Advocate Ibrahim Komu. B/C: William Makori (RMA) present.

Right of appeal explained.


F.M. MIRINDO
JUDGE

30/5/2024