

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB REGISTRY)**

AT MWANZA

MISC. CIVIL APPLICATION NO. 5046 OF 2024

BETWEEN

RUTH LANGENI MFANGA APPLICANT

VERSUS

ILEMELA MUNICIPAL CAUNCIL 1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

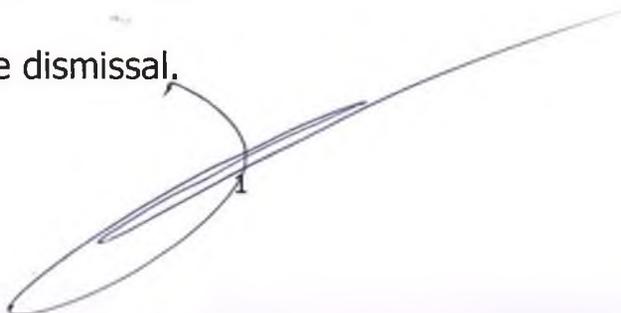
RULING

29th & 29th May, 2024

A. MATUMA, J.

In this application, the applicant is seeking restoration of Misc. Application No. 124 of 2023 which was dismissed for want of prosecution on the 6th February, 2024.

In her affidavit the applicant avers that on the date her application was dismissed she was sick but after having attended to hospital that morning she hurried to this court and signed the visitors' Register at 10:00 hours but unfortunately at that time her application was already dismissed for want of prosecution. She further averred that she met the learned state attorneys who were representing the respondents and it were them who informed her about the dismissal.

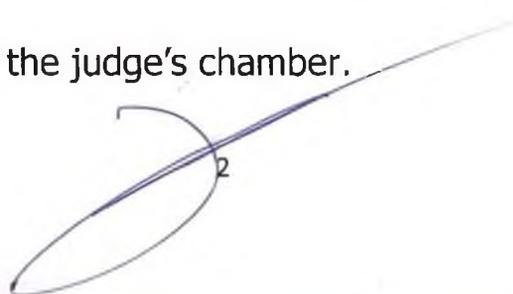
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About the absence of her advocate, she stated that she was previously represented by Mr. Majid Kangile learned advocate who was however employed in the public service and thus lacked locus to represent her.

At the hearing of this application the applicant was represented by Mr Victor Karumuna learned advocate who adopted the contents of the applicant's affidavit. He finally prayed for this application to be granted on the strength of the depositions in the affidavit.

On his part the learned state attorney Mr Allen Mbuya who represented the Respondents adopted the contents of the counter affidavit and made submission in opposition to this application but in the due course he changed his mind and supported this application.

Having heard the parties for and against this application, I find that the applicant has advanced good cause for her absence when the suit was called on for hearing. She was sick as evidenced by medical documents from two different hospital. More important, she came to court on the same very day though at the time she reached in court, her application was already dismissed. I believe that the applicant deposed the truth when she stated in her affidavit that she appeared in court and signed the visitors' register at 10:00 hours and met the learned state attorneys in court corridors coming out of the judge's chamber.

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Had it been not true the learned state attorney Mr. Allen Mbuya who was mentioned in the affidavit and had deposed the counter affidavit could deny such depositions in clear terms. He did not do so and at the hearing of this application he ended conceding to the prayers made by the applicant.

In the circumstances, I grant the prayer, set aside the dismissal order of this court dated 6/2/2024 and order that Misc. Application No. 124/2023 is hereby restored in the court register for continuation of hearing at the stage it had reached before it was dismissed for want of prosecution.

I grant no costs to either party.

It is so ordered.



A. Matuma

Judge

29/05/2024

Court: Ruling delivered this 29/05/2024 in the presence of the applicant in person and her advocate Mr. Victor Karumuna and in the absence of the respondents.



A. Matuma

Judge

29/05/2024