

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA SUB – REGISTRY)**

**AT ARUSHA**

**CIVIL APPEAL NO.41 OF 2023**

*(Originating from Miscellaneous Civil Application No 39 of 2022, Arusha District Court)*

**ALBERT JOSEPH..... APPELLANT**

**VERSUS**

**ELISHA NELSON MNYAWI ..... RESPONDENT**

**JUDGMENT**

**25<sup>th</sup> April & 30<sup>th</sup> May 2024**

**KIWONDE, J.**

The appellant, Albert Joseph, being dissatisfied with the decision of the District Court of Arusha in Miscellaneous Application No.39 of 2022, has appealed to this court basing on two (2) grounds namely: -

- 1) That, the learned trial Magistrate erred in law and fact by holding that the appellant failed to prove his case.
- 2) That, the learned trial Magistrate erred in law and in fact by failing to give the appellant time to adduce his evidence of illness (sic).

The appellant prayed this court to quash and set aside the ruling of the lower court.

On 21<sup>st</sup> March 2024, it was agreed by the counsel for the respondent and the appellant and ordered by the court that the appeal be argued by way of filing of written submissions. All parties filed them, save for rejoinder submissions as the appellant said his counsel did not file the same because he was engaged in other duties.

In his submissions in-chief, the appellant argued the second ground of appeal that he informed the lower court that he was sick on the dates fixed for hearing of the application and he wanted to produce medical chit (document). The appellant said he was deprived of his right to be heard.

Concerning the first ground of appeal, the appellant argued that illness is a good cause for setting aside dismissal order.

In reply, the counsel for the respondent opposed the appeal on reason that it lacks merits. Responding to the first ground of appeal, the learned counsel for the respondent said the appellant failed to prove that he was sick when the application went for hearing before the lower court. He just stated mere words of mouth that he was sick and under

medication. He added that the appellant did not attach to his affidavit anything like medical chit. The counsel argued that in law, the parties are bound by their pleadings, so, even if he would produce the said document, it would not be admitted.

With regard to the second ground of appeal, the counsel for the respondent argued that the appellant was availed with right to be heard. He said this is evident on the proceedings of 12<sup>th</sup> December 2022.

From the pleadings, written submissions and the records of the lower court, the main issue for determination by this court is whether the appeal finds merits or otherwise.

I have thoroughly read the written submissions and the lower court proceedings and ruling. The parties cited several case laws for reference which I appreciate but I will not repeat them here. I now turn to consider them in response to the issue raised above.

I opt to start with the second ground of appeal that the appellant was deprived by the lower court of his right to be heard. His argument on this ground is that he told the lower court that he had a medical chit as evidence that on the dates fixed for hearing of the application, he was seriously sick and under medication. The appellant averred that he

wanted to produce the document in court. However, when I went through the lower court proceedings dated 12<sup>th</sup> December 2022, it is clearly shown that the appellant was heard. It was in his rejoinder submissions when he stated, I quote:

*"I have a medical sheet. I wanted to bring it to court. That is all".*

From this quotation, the appellant raised it in the rejoinder submissions and said he had such document and wanted to bring it in court. However, he did not ask for time to do so. Nor did he state why he did not come with it when the matter was fixed for hearing. Perhaps, the appellant could seek for adjournment of the hearing of the application because he had not come to court with such a necessary medical document. But he proceeded with hearing, wound up his submissions in-chief and in rejoinder, he stated about the existence of the medical sheet.

For that matter, the appellant was not deprived by the lower court of his right to be heard. The second ground of appeal is thus, devoid of merits and it is hereby dismissed.

Reverting to the first ground of appeal, it is obvious that the appellant had no proof of his allegations of illness. The counsel for the respondent

rightly argued that the appellant raised the issue of illness by mere words of mouth without proof. When the application was filed before the District Court, he did not depone nor attach such medical document to his affidavit. Therefore, the first ground of appeal lacks merits too.

Consequently, the appeal is found without merits. It is hereby dismissed with cost. The ruling of the District Court dated 16<sup>th</sup> May 2023 remains undisturbed.

Order accordingly.

**DATED** at **ARUSHA** this 30<sup>th</sup> day of May, 2024.



*F. H.*  
**F. H. KIWONDE**

**JUDGE**

**30/05/2024**