

IN THE HIGH COURT OF ZANZIBAR

HELD AT TUNGUU

CIVIL APPLICATION NO. 11 OF 2024

(Arising from Appeal No. 03 of 2023)

MANAGER VERA CLUB APPLICANT

V.

MANENO IBRAHIM SHAABAN RESPONDENT

RULING

Date: 28th March, 2024

S. HASSAN, (J)

The applicant herein has preferred this Application **under section 129 and Order XLVI Rule 19 of the Civil Procedure Decree Cap 8** seeking for re – admission of **Appeal No. 03 of 2023** which was dismissed under **Order XLVI Rule 17** on the 8th August, 2023.

Prior to this Application, the Applicant filed Civil Application **No. 103 of 2023** which was struck out by the court on the 8th February, 2024 for wrong citation of the enabling provision of the law. Hence this is another attempt for the Applicant (appellant) to have his Appeal re admitted back by the court after the initial attempt was struck out.

In this Application, the applicant is under the legal service of learned Counsel Mr Karume Haji Mrisho, while the Respondent is unrepresented and appeared in person.

For this Application to be allowed by the court the Applicant (appellant) has to prove to the satisfaction of the court that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing according to **Order XLVI Rule 19 of the Civil Procedure Decree Cap 8** which provides as follows:

“ Where an Appeal is dismissed under paragraph (2) of rule 11, or rule 17, or rule 18, the appellant may apply to the appellate court for the re admission of the appeal, and where it is proved to the satisfaction of the court that he was

' Having laid the position of the law on the manner this court may re admit back the appeal now it is time to consider whether the appellant/applicant herein has show to the satisfaction of this court that he was prevented by sufficient cause to appear when the Appeal was called for hearing.

In providing the sufficient cause, Mr Karume relied on **para 3 of the Affidavit** deposed by Mr Itael and **para 2 of his own Affidavit**. With respect to para 3 of the Affidavit of Mr Itael the main reason stated for non appearance shown is that Advocate Karume had a cases before Hon Chief Justice hence appeared before him. While the reason stated on para 2 of Mr Karume Affidavit is that he had a matter before Hon Aziza Suwedi and therefore went on to attend those matters. Based on those reason the Appellant/Applicant prayed for this Application be allowed.

On the other side, the Respondent Mr Maneno Ibrahim, did not have much to submit being a layman but stated that the Applicant was under a duty to appear before this court and ask for adjournment because they were 2 Advocates hence either of them could have appeared before this court. Finally he submitted that there is no sufficient cause shown and prayed for the Application be dismissed.

In his brief re joinder Mr Karume reiterated what he has submitted in his submission in chief and prayed for the Application be allowed and Appeal be admitted back.

Having heard both parties herein, I have digested the submission made and now it is time to conclude this issue.

As I have narrated herein, the position of the law is that the Appellant/ Applicant herein has to show that he was prevented by sufficient cause to attend the hearing when the Appeal was called on for hearing, now let me digest if the reason under para 3 of Mr Itael Affidavit and para 2 of Mr Karume Affidavit are sufficient cause to prevent the appellant form appearing.

Let me first provide what is mean by sufficient cause by making reference to the case of **Benedict Mumello v.Bank of Tanzania [2006] 1 EA 227**, the court subscribed to the decision of the single justice of the court in the case of **Tanga Cement Company Limited V. Jumanne D. Masangwa and Amos A. Mwalwandwa, Civil Application No. 6 of 2001** (unreported) where the Court held that:

'What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant .

Also the decision of the court of Appeal in **Ramadhani v. Geita Mining, misc Application No.29 of 2013 at page 2 and 3**. In this case the court explained the

guiding principle that in order to justify a court extending time there must be some material on which the court can exercise the discretion. See also in **Regional Manager, Tanroads Kagera V. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007** (CAT unreported), the court observed that the following:

'What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules'

From the above cited authorities, this court is of the firm view that the word **"sufficient or good cause"** depend on the circumstances of the case including reasons and explanations advanced by the applicant. In the current application the applicant reason for non appearance is that he and his fellow advocate had other matters in the presence of *Hon Chief Justice* and *Hon Aziza Suwedi (J)*, the fact that we both locate in the same premises the appellant could have indeed appeared before me albeit in brief and seek adjournment of his appeal as submitted by Mr Maneno.

Failure of the appellant to appear when his Appeal was called for hearing twice by advancing the above reasons do not amount to any sufficient cause at all in my view. I agree with Mr Maneno that the applicant has not shown any sufficient cause for his appeal to be admitted back, hence this appeal ought to be dismissed.

In respect of the above reasons, the applicant has failed to show sufficient cause which will warrant this court to exercise its judicial discretion to re admit back the **appeal No. 03 of 2023**, therefore this application is hereby dismissed with costs.

Ordered Accordingly.


S. HASSAN (J)

Dated: 28th March, 2024.