

TANZANIA / JUDGMENT

anyambilile mwakisale vs abdallah katoto 2022 tzca 534 17 august 2022

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17 August 2022

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM CIVIL APPLICATION NO. 553/01 OF 2017 ANYAMBILILE MWAKISALE..... APPLICANT VERSUS ABDALLAH KATOTO.....RESPONDENT (Application from the decision of the Court of Appeal of Tanzania at Dar es Salaam) (Mugasha, J.A.) dated 6th day of November, 2017 in Civil Application No. 493/17 of 2016

RULING

21st July & 17th August, 2022 RUMANYIKA, J.A.: The application is for restoration of Civil Application No. 493 /17 of 2016 which was dismissed on 06/11/2017 by Mugasha, J.A. It has been brought by Notice of Motion taken under rules 63 and 48(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit of the applicant Anyambilile Mwakisale, whose contents, his advocate Mr. Japhet Mmuru, adopted at the hearing. Mr. Abdallah Katoto, the respondent appeared in person unrepresented. Expounding the applicant's written submission, pursuant to rule 106(1) of the Rules filed on 31.01.2018, Mr. Mmuru, submitted that the reasons which prevented the applicant from entering appearance on the fateful date are that the latter fell sick on 01.10.2017 and was attended at Shree Hindu Mandal Hospital, Dsm (copy of the Medical Chit, Ann AP2 to the affidavit) and then he travelled to Kasulu Kigoma on a fourteen day's sick leave given by his employer, the Police Head Quarters. Mr. Mmuru further submitted that still away at Kasulu, his leave was extended as his ill health persisted until 30/10/2017 when he felt well and travelled back and arrived in Dar es Salaam on 08/11/2017 by Saratoga Bus only to find that his application was dismissed two days before for his nonappearance. Additionally, Mr. Mmuru submitted that as the applicant was too economically unable to pay for the legal service, he solicited aid from the TLS where he obtained no service. On 25/09/2017 he engaged Mr. Mmuru exgratia and filed the present belated application on 05/12/2017. On his part, the respondent had no useful submission. He just urged me to decide as deemed just and appropriate. Probed by the Court, Mr. Mmuru submitted that by that time the applicant was a police officer of the rank of SSGT, CID Head Quarters. That 25/09/2017 as the date he was engaged by the applicant is a typographical error. It should read 25/11/2017 or else paragraph 8 of the affidavit supporting the application be expunged much as, he submitted, this application was lodged within thirty days prescribed under rule 63(3) of the rules. As it has been noted from the

beginning, an application for restoration of application dismissed for non-appearance of the applicant is governed by rule 63(3) of the Rules. It reads as follows: ... where an application has been dismissed under sub-rule

- (1) ... the party in whose absence the application was determined may apply to the Court to restore the application for hearing... if he can show that he was prevented by any sufficient cause from appearing when the application was called on for hearing. (Emphasis added). From the above quoted text of the law therefore, in an application of this nature the bottom line is sufficient cause shown by the applicant. Rule 63(3) of the Rules, as applied to the present case, the issue for my consideration is whether the applicant has shown sufficient cause for his non-appearance on the fateful 06/11/2017. Having been confronted by a similar situation in a numbers of cases, the Court applied the provisions of rule 63(3) of the rules. See: Patson Matonya v. the Registrar Industrial Court of Tanzania and Another, Civil Application No. 90 of 2011 and Bahati Musa Hamis Mtopa v. Salum Rashid, Civil Application No. 112 /07 of 2018 (both unreported). The applicant may have been sick, reported his case and he was attended at Shree Hindu Mandal for some days and then on medical ground travelled to Kasulu Kigoma. On expiry, his leave may have been extended to 30/10/2017 or around 08/11/2017 latest when he travelled back and arrived in Dar es Salaam. Fine, however, the applicant's allegations that the sickness and his travel to Kasulu - Kigoma are the reasons that prevented him from entering appearance on 06/11/2017 have not been substantiated. I am holding so for four main reasons, one, the respective police movement order of 29/09/2017 issued to the applicant from Dar es Salaam - Kasulu, Kigoma and the two extensions of the sick leave subsequently issued to him are neither medical referral letters nor the substitutes thereof. Two, for all intents and purposes the applicant's shifting from the renown Shree Hindu Mandal Hospital, Dsm to Kasulu - Kigoma was not reference. Three, it is not clear to me whether at Kasulu, Kigoma the applicant had been attended in a modern hospital or by traditional healers and who are they. Four, the applicant may have travelled to Kasulu - Kigoma just for a rest and leisure and these possibilities were not ruled out and it does not constitute a sufficient cause for the delay. Timely justice would be a nightmare if the parties to case appear in court only when they feel like. Consistently on different occasions we have directed that in the interest of justice, like human lives, every litigation has to come to an end. See: our decision in Abdallah Rwegasira v. The Judge Advocate General, Criminal Appeal No. 5 of 2011 (unreported). It would appear in the present case that the applicant's interest was unpredictably on and off and such luxury of prosecuting cases in courts of justice cannot be allowed. I think in considering to restore, or refuse restoration of a matter previously dismissed for want of prosecution or non-appearance of the applicant for that matter, the judicial officer's duty to discourage possible endless litigations should be number one priority. It is very unfortunate, as born out from the record that this matter is about one and a half decades old in courts. Unless in this ruling I cut the long story short by not restoring the instant application, there would be no hopes for it to be finally concluded in the nearest future. Consequently, the application for restoration of Civil Application No. 493/17 of 2016 is devoid of merit. It is hereby dismissed

with costs. It is so ordered. DATED at DAR ES SALAAM this 12th day of August, 2022. S. M. RUMANYIKA JUSTICE OF APPEAL The ruling delivered this 17th day of August, 2022 in the presence of Mr. Japhet Mmuru, learned counsel for the applicant and respondent in person, is hereby certified as a true copy of the original. R. W. CHAUNGU DEPUTY REGISTRAR COURT OF APPEAL 6

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/anyambilile-mwakisale-v-abdallah-katoto-restorationofdismissedapplication-tzca-2022

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