

TANZANIA / JUDGMENT

boniphace microfinance company limited vs isaya mazengo and farida said karimunda 2023 tzhc 16427 31 march 2023

COURT
TZHCDECIDED
31 March 2023

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IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY OF DODOMA AT DODOMA
MISC. CIVIL APPLICATION NO. 24 OF 2022 BONIPHACE MICROFINANCE COMPANY LIMITED

"~..... APPLICANT VERSUS ISAYA MAZENGO | r FARIDA SAID

KARIMUNDAj RESPONDENTS (Origination from dismissal order of the High
Court of Tanzania, Dodoma) Dated the 05th of May, 2022 In PC. Civil Appeal No. 02 of 2020

RULING

21st February & 31st March, 2023 MDEMU, J.: This is an application for restoration of PC. Civil
Appeal No. 102 of

2020. According to the affidavit in support of the application, this Court (Mdemu, J.) dismissed the said appeal for nonappearance of the Applicant on 05th of May, 2022. He thus moved this Court for restoration of the said appeal under the provisions of section 95 and Order IX Rule, 4 of the Civil Procedure Code, Cap.33 R.E. 2019. The application is by way of chamber summons and is supported by the affidavit of the Applicant sworn on 30th of May, 2022. The Applicant and the Respondents appeared in person before me on 21st of February, 2023 arguing for and against the application respectively. The Applicant at the inception of hearing, prayed the affidavit be adopted to form part of his submissions. He thereafter submitted that, according to the adopted affidavit, the main ground for nonappearance on the appointed date is that, he got a sudden sickness around the Court premises thus, had to rush to Mirembe hospital. He said therefore, it was not deliberate. He also said that, due to that condition, he lost his memory such that, he could not ask anyone to file notice of absence. He therefore, prayed the appeal to be restored and that, such restoration will not in any way prejudice the rights of the Respondents. Replying to the application, along with prayer for adoption of the counter affidavit, the Respondents submitted that, the attached letter showing that the Respondent was sick is not connected to the date the appeal was set for hearing. Thus, they urged me to dismiss the application. The Applicant re-joined briefly that, the document he attached indicates that he has permanent sickness which normally occurs regularly. Under the circumstances, it is not possible to have a fresh

documentation, ■J___ instead he opted to use the old one. He therefore prayed the appeal be restored and determined. This is what parties submitted and which also forms the contents of their affidavit and counter affidavit. The question is whether the Applicant satisfies the Court that he was prevented by sufficient cause from appearing when the appeal was called on for hearing. In essence, what amounts to sufficient cause depends on a case to case basis. See Mwanza Director of New Refrigeration Co. Ltd vs. Mwanza Manager TANESCO (2006) TLR 329. The Applicant's only reason advanced is illness. I'm aware that, illness constitutes sufficient cause for restoration. However, such illness must be sufficiently proved. Looking at the affidavit in support of the application, the Applicant attached a letter from Mirembe Hospital explaining the diseases facing him. It is on record that, the letter was written on 22nd November, 2021 whereas the case was dismissed on 05th May, 2022. As the Respondents stated, the said letter is not related to the date i.e 05th May, 2022 which the appeal was set for hearing. But reading between the lines of the said letter, it seems to me such disease has a regular tendency to repeat regularly and occasionally. This made me to believe that, the Applicant was in Court on the day and fell sick when the matter was called up for hearing. I quote the specific part of the letter for easy of reference: - AHyetajwa ni mteja anayetibiwa hapa katika Hospitali ya Mirembe. Alipoletwa kwetu kwa mara ya kwanza aiitoa taarifa ya kuwa na daiiii ya kusikia kizunguzungu, kuona hali ya utando wa giza machoni maumivu makali ya kichwa na mwiH kuishiwa nguvu. Baada ya uchunguzi wa kitaalam, Higundu/ika kuwa, ndugu Boniface Sungura anasumbuliwa na tatizo linalojulikana kitaalam "Migraine" ambaIo Una tabia ya kiujirudia rudia. (Emphasis supplied) On that stance, the affidavit of the Applicant, specific in paragraphs 5,6 and 7, have indicated sufficient cause for non-appearance on the appointed date for hearing of the dismissed appeal. That said, the application is allowed and PC. Civil Appeal No.02 of 2020 dismissed on 05th of May, 2022 is accordingly restored. I do not prescribe costs. Order accordingly. \ J Gerson XMdemu \v JUDGE 31/03/2023 DATED at DODOMA this 31st day of March, 2023 I \ Gerson J. Mdemu JUDGE 31/03/2023 4

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/boniphace-microfinance-company-limited-v-isaya-mazengo-restorationofappeal-tzhc-2023>

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