

TANZANIA / JUDGMENT

exim bank t ltd another vs a m steel iron mills ltd 5 others 2023 tzhccomd 334 6 october 2023

COURT
TZHCCOMDDECIDED
6 October 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM MISC. COMMERCIAL APPLICATION NO. 96 OF 2023 (Arising from Commercial
Case No. 22 of 2022) BETWEEN EXIM BANK TANZANIA LIMITED..... 1st APPLICANT
HARVEST TANZANIA LIMITED..... 2nd APPLICANT VERSUS A.M STEEL & IRON
MILLS LTD..... 1st RESPONDENT S.S. TRADERS LTD..... 2nd
RESPONDENT SHEIKH SHAHID MAJEED..... 3rd RESPONDENT SHEIK SAJID
MAJEED..... 4th RESPONDENT SHEIK ZAHID MAJEED.....
5th RESPONDENT SHEIK HAMID MAJEED..... 6th RESPONDENT

RULING

A.A. MBAGWAJ. This is an application to set aside a dismissal order of the applicant's counter claim issued by this Court on 24th May, 2023 in Commercial Case No. 22 of 2022. The application has been brought by way of chamber summons made under Order IX Rule 6(1) and (2) and Section 95 of the Civil Procedure Code and it is supported by an affidavit sworn by Edmund Mwasaga, the applicant's Head of Legal. i In contrast, the application was vehemently contested by the respondents through a counter affidavit sworn by Mr. Godfrey Ukwonga, the respondents' counsel who represented them in Commercial Case No. 22 of 2022. Before delving into the merits of the application, I find imperative to give the historical background leading to the present application albeit in brief. The respondents instituted Commercial Case No. 22 of 2022 against the applicants. Upon service, the applicants filed their written statement of defence along with the counter claim. Then the matter was scheduled for hearing on 23rd May, 2023. However, the hearing could not proceed as the respondents/plaintiffs informed the court that they had terminated the services of their counsel one Mr. Ibrahim Mbiu, learned advocate and for that reason they had engaged Mr. Godfrey Ukwonga who could not appear in court on 23rd May, 2023 because of short notice. As such, considering the old age of the case, the matter, upon consensus of both parties including Mr. Gabriel Mnyeale was adjourned for the last time and fixed for hearing on the following day i.e., 24th day of May, 2023. On 24th day of May, 2023 neither the applicants nor their advocate Mr. Gabriel Mnyeale appeared. To crown it all, not even a notice was given to

the court on their absence. As such, the Court, upon application by the respondents/plaintiffs' counsel Mr. Ukwonga, ordered the hearing to proceed *ex parte* against the applicants/defendants. Up to the conclusion of hearing of the main suit, the applicants were not in court hence the Court dismissed the counter claim for want of prosecution. It is against this background, the appellants have filed the present application. The applicants contend that Mr. Gabriel Mnyeale was absent because on the same date he had to appear before Hon. Kakolaki in Civil Case No. 75 of 2019 between Exim Bank (Comoroes) S.A vs Cota Sari and Another. The applicants further state that Mr. Gabriel Mnyeale did not inform them about his absence otherwise they would have engaged another attorney. Conversely, the respondents strongly oppose the application. In the counter affidavit, the respondents lament that the stated reasons do not amount to sufficient and valid reasons for setting aside the dismissal order. Instead, the respondents state that the applicants' averments exhibit negligence on their part. When this application came for hearing, both parties agreed to dispose of the matter by written submissions. I have carefully read the rival submissions filed by the parties and I am grateful to both counsel. I have also made reference to the court record in Commercial Case No. 22 of

2022. Suffice it to state that I have considered both submissions in my deliberations. 3 The pertinent issue for determination is whether the applicants have exhibited sufficient grounds for this Court to set aside the dismissal order. Throughout the applicant's affidavit, there is no gainsaying that Mr. Gabriel Mnyeale was aware of the date and time of hearing of Commercial Case No. 22 of 2022. It is also on court record in Commercial Case No. 22 of 2022 that on 23rd May, 2023, the applicants' witness one JACOB SAMWEL SANGA who is the 1st applicant's employee was present in court. Surprisingly, neither Mr. Gabriel Mnyeale, learned counsel nor JACOB SAMWEL SANGA showed up in Court on 24th May, 2023. This tells it all that the applicants deliberately decided not to come to court contrary to the court order which was made in the presence of both parties. It should be noted that Court orders are meant to be complied with and this Court is not prepared to condone people who lightly disrespect its orders. Granting the instant application would be tantamount to blessing disobedience of court orders and this would escalate protracted trials. Having considered all the above, I am opined that the applicants have failed to provide sufficient cause for this Court to set aside the dismissal order. That is to say, there was no sufficient ground for their non appearance. In the event, this application is without merits and for this reason I dismiss it with costs. 4 It is so ordered The right to appeal is explained. 5

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/exim-bank-tanzania-limited-v-am-steel-iron-mills-ltd-settingaside-dismissal-tzhccomd-2023

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