

TANZANIA / JUDGMENT

hamidu zuberi vs asha gwaay 2 others 2024 tzhc 180 6 february 2024

COURT
TZHCDECIDED
6 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI MISCELLANEOUS CIVIL APPLICATION NO. 37 OF 2023 (Arising Civil
Appeal No. 74 of 2023 in the Sub-Registry of Manyara at Babati, original Civil Case No. 3 of 2022
District Court of Babati) HAMIDU ZUBERI..... APPLICANT VERSUS
ASHA GWAAY..... 1st RESPONDENT YUSUPH
HAMIS..... 2nd RESPONDENT SAID HAMIS
HUSSEIN..... 3rd RESPONDENT

RULING

6th & 6th February, 2024 Kahyoza, J. The applicant is praying this Court to set aside the dismissal order. The applicant appealed to this Court against the decision of district court of Babati. Following the applicant's absence on the date the case was fixed for hearing, the Court dismissed the appeal for want of prosecution. Displeased with the dismissal order, the applicant applied to this Court seeking the Court to set aside the dismissal order. The respondents were served with the chamber summons supported by an affidavit and opted not file a counter affidavit to oppose the application. The issue is whether the applicant has disclosed sufficient reasons for his non-appearance. The applicant's only reason is that his advocate received a message that his case was fixed for hearing on 21.11.2023. Later, he received another message that the matter was fixed for hearing on 23.11.2023. He appeared on 23.11.2023 only to be informed that the appeal was dismissed on 21.11.2023 for want of prosecution. As pointed out above, the respondents did not file a counter affidavit to challenge the applicant's averments. I, therefore, take it that the applicants allegations that he got confusing messages from the cases management system that the appeal will be heard on 23.11.2023 and not 21.11.2023 to be correct statement of fact. For that reason, I find that the applicant's absence was for good cause. He was absent due to confusing message from the system as to the hearing date. In the end, I set aside the dismissal order and restore Civil Appeal No. 10 of 2023 on record. I ts. J. R. Kahyoza Judge 06/ 02/2024 Court: Ruling delivered in the presence of the parties and Mr. Paschal advocate for applicant. I sent. J. R. Kahyoza Judge 06/ 02/2024

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ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/307997/source_file/hamidu-zuberi-vs-asha-gwaay-2-others-2024-tzhc-180-6-february-2024.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/hamidu-zuberi-v-asha-gwaay-settingasideddismissal-tzhc-2024

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