

TANZANIA / JUDGMENT

OBED MASATU RULING

COURT
TANZLII

DECIDED
31 July 2024

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA MISC. CIVIL APPLICATION NO. 12385 OF 2024 (Arising from Misc. Civil
Application No. 000006026 of 2024) BETWEEN

1. OBED MASATU
2. MAGAMBO MASATU APPLICANTS VERSUS
1. WILLIAM MAIGA
2. MATESO STANISLAUS
3. NDAGABWENE NGURUTI RESPONDENTS
4. BUTHOBI BISEKO
5. STANSLAUS BWIRE
6. CHARLES MRONGO

RULING

17th & 31st July, 2024 CHUMA, J. The applicants herein above are seeking the court order to set aside the dismissal order dated 7th May 2024, cost, and any other reliefs this court may deem fit to grant. This application is preferred under Order IX Rule 3 of the Civil Procedure Act [Cap 33 R.E 2019]. The application was as usual made according to the practice of the High Court by chamber summons and 1 affidavit in support of the same. Upon being served, the respondents filed a joint counter-affidavit challenging the grant of the orders sought in the chamber summons. In this application, the applicant is represented by Mr. Masoud Mwanaupanga Learned counsel while the respondents are represented by Ms. Hidaya Learned counsel. Given the submission of both parties for and against this application which I don't intend to reproduce, the main issue for my determination is whether the applicant has shown good cause to trigger the Court to exercise its discretion to grant the sought order. The main reasons advanced by the applicant in this application are one appearance of the applicants' advocate in criminal session case in economic case No.02/2022 before Hon Manyanda J. Between Republic V Mnawala Hamis @ Nyanda as per the attached copy of summons annexure UK 4 in the applicant's affidavit and the other advocate being on his leave and traveled to Dar es Salaam. The reasons however

contested by the respondent arguing that the case belongs to the parties, not their advocate. The respondents were not 2 informed of the applicant's absence in court. Their affidavit does not reflect why the applicants failed to make an appearance in court. I subscribe to the submission of Ms. Hidaya on one hand that the case belongs to the parties but I decline to side with her on the alleged obligation by the respondent to inform the respondents of their absence in court as rightly pointed out by Mr. Mwanaupanga. This is because what parties ought to do is to notify the court in case of default to enter an appearance in court. Parties are duty-bound to appear in court be it by themselves or via representation. The pertinent question here is whether there were good reasons for non-appearance by the applicants in court. Since the applicants in this case are represented and their advocates advanced the reasons for failure to attend court sessions which I find justifiable. In the event, it is my settled view that, their reasons including attending a criminal session in the circumstances of this application are with good cause to warrant this court set aside the dismissal order in Misc Civil application no 6026/2024. In the upshot, the application is allowed. Owing to the nature and circumstance of this matter, I desist from making an order for cost. 3 I so order. DATED at MWANZA this 31st Day of July 2024. W.M. CHUMA JUDGE Ruling delivered in court in attendance of Mr. Masoud Mwanaupanga Learned advocate for the applicant who also holds brief of Ms. Hidaya Haruna Learned advocate for the respondent. Mr Charles Mrongo 6th respondent is also present this 31st day of July 2024. W.M. CHUMA JUDGE 4

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Prepared on 14 October 2026 · Esheria