

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. CRIMINAL APPLICATION NO 72 OF 2019**

(Arising from PC Criminal Appeal No 03/2019 at Mwanza High Court and Misc. Criminal Application No 3/2017 at Geita District Court)

**YUNICE MABULA .....APPLICANT**

**VERSUS**

**MWAJUMA LUFEDHA .....RESPONDENT**

**RULING**

**13 & 27.02.2020**

**RUMANYIKA, J.:**

The application for restoration of Pc Criminal Appeal No. 3 of 2019 by order of this court "struck out" on 19.6.2019 for nonappearance of the applicant is brought under item 1 to the schedule of the Customary Law (Limitation of Proceedings) Rules, 1963 GN. No. 311/1964 and Section 37 (3) (c) of the Magistrate's Court Act Cap 11 RE. 2002. It is supported by affidavit of Yunice Mabula (the applicant). Whose contents essentially the applicant adopted during the hearing.

When the application was called on 13.02.2020 for hearing, Mwajuma Lufedha who was notified or under the circumstances having had reasons to be aware she wasn't in court. I fixed the date for the ruling. As both parties had been heard sufficiently on 4.11.2019.

The applicant is on record having submitted that she never ever missed it until on the fateful 19.6.2019. That as she was busy on the disputed land sometimes before, the respondent's son (now serving a term in jail) attacked and injured her with a panga. That for that reason she had to remain back home being nursed and failed to appear on the fateful date. Her appeal was therefore struck out. Hence the instant application. That is all.

Similarly brief, the respondent submitted that there was nothing to fault the judge in dismissing the appeal as indeed the applicant had not been in court and he, the respondent did not know the reasons for the absence. That is it.

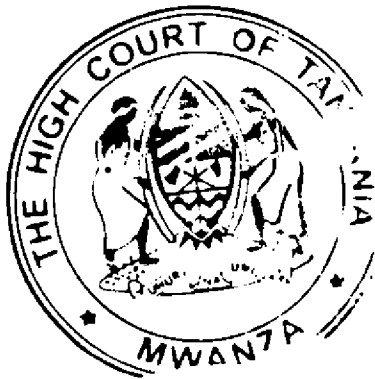
The issue is whether the applicant has assigned a sufficient ground for restoration of the appeal essentially "dismissed" for her nonappearance on 19.6.2019. Much as it was undeniable fact that the applicant defaulted appearance on 19.6.2019.

On or by 19.6.2019 the appellant may have not been admitted in hospital but according to copy of PF3 issued on 3.6.2019 (Annexed to the application) reasonably she may have been that prevented from appearing in court as outpatient. However, it cannot be said that the respondent wasn't aware of all this. Much as she did not sufficiently dispute the allegations that the persisting land dispute had led to the respondent's son assault the applicant and, without more words the latter remained back as outpatient or otherwise say for 16 days for medication.

Now that upon the appeal being dismissed on 19.6.2019 the applicant lodged the instant application only on 30.7.2019 say 40 days

later, she was reasonably militant pursuing her right to appeal under the circumstances.

In the upshot the application is granted.



  
S. M. Rumanyika  
**JUDGE**  
**20.02.2020**

Delivered under my hand and seal of the court in chambers. This  
27.2.2020 in the absence of the parties but dully notified.



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**F.H. MAHIMBALI**  
**DEPUTY REGISTRAR**  
**27.02.2020**