THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT MWANZA

MISCELLANEOUS LABOUR APPLICATION NO. 000012160 OF 2026

FABIAN ANACLET MASSAGA ..... COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

THE REGISTERED TRUSTEES OF TANZANIA EPISCOPAL CONFERENCE ..... RESPONDENT / DEFENDANT

RULING

ROBERT, J

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF MWANZA AT MWANZA MISC. CIVIL APPLICATION NO.12160 OF 2026 (Arising from Execution Case No. 30034 of 2025 and Labour Dispute No. CMA/MZA/NYAM/49/2025/27/2025) FABIAN ANACLET MASSAGA ..... APPLICANT VERSUS THE REGISTERED TRUSTEES OF TANZANIA EPISCOPAL CONFERENCE (TEC) ..... RESPONDENT RULING 29/7/2026 & 29/7/2026 ROBERT, J. The Applicant has moved this Court by way of an application seeking an order to set aside the order dismissing Execution No. 30034 of 2025 for want of prosecution and to restore the said execution proceedings for hearing on their merits. The record shows that the Respondent was duly served with the hearing notice but neither entered appearance nor filed a counter-affidavit in opposition to the application. On the hearing date, learned counsel for the Applicant prayed that the application proceeds

ex parte. Having satisfied itself that the Respondent had been afforded a reasonable opportunity to participate in the proceedings but had elected not to do so, the Court allowed the application to proceed ex parte. In support of the application, learned counsel for the Applicant adopted the supporting affidavit and relied particularly on paragraphs 7 and 8 thereof. Counsel submitted that the execution proceedings had been dismissed on 13th May, 2026 for want of prosecution, notwithstanding that the Applicant and the Respondent had attended Court at what they understood to be the scheduled hearing time of 2:00 p.m. Counsel argued that upon their arrival they were informed that the matter had earlier been called at 9:00 a.m. and dismissed due to the parties' non-appearance. It was further submitted that the Applicant's failure to appear when the matter was called was not occasioned by negligence or lack of diligence but resulted from a misunderstanding regarding the scheduled hearing time. Counsel therefore urged the Court to exercise its discretionary powers in favour of the Applicant, contending that the interests of justice require that the dismissal order be set aside so that the execution proceedings may be determined on their merits. I have carefully considered the application, the supporting affidavit, the oral submissions made by learned counsel for the Applicant and the entire record of Execution No. 30034 of 2025. The issue falling for determination is whether the Applicant has established sufficient cause to warrant the setting aside of the dismissal order and restoration of the execution proceedings. It is trite that the power to set aside an order dismissing a matter for want of prosecution is a discretionary one. Like all judicial discretions, it must be exercised judiciously and upon sound legal principles, having regard to the circumstances of each particular case. The overriding consideration is whether sufficient cause has been shown and whether the ends of justice would be better served by restoring the matter than by allowing the dismissal order to stand. The Applicant's explanation is that both parties were under the impression that the execution proceedings had been fixed for hearing at 2:00 p.m. on 13th May, 2026 and accordingly appeared before the Court at that time, only to learn that the matter had already been dismissed earlier in the



day. The Court has carefully examined the record of the execution proceedings. It is true that the proceedings immediately preceding the dismissal do not indicate that the matter had been adjourned to 2:00 p.m. On the contrary, the record appears to show that the matter stood adjourned to 9:30 a.m. Ordinarily, where the official record clearly indicates the appointed hearing time, the Court would be slow to accept an explanation inconsistent with that record. Court records enjoy a presumption of regularity and correctness unless the contrary is clearly demonstrated. However, the circumstances of the present application disclose an unusual situation. Learned counsel has categorically represented to the Court that the parties had been informed, or had agreed in the presence of the Court, that the matter would be taken up at 2:00 p.m. Although that arrangement does not find expression in the recorded proceedings, it remains possible that such an understanding was reached but was inadvertently omitted from the record. Human error in recording court proceedings, though uncommon, cannot be entirely ruled out. More importantly, there is nothing on record suggesting that the Applicant deliberately absented himself from the proceedings or intended to delay the execution process. The explanation advanced is neither inherently improbable nor indicative of bad faith. Indeed, had the Applicant intended to abandon the execution proceedings, there would have been little reason to promptly seek restoration immediately after the dismissal. This Court is guided by the long-established principle that, whenever reasonably possible, disputes should be determined on their merits rather than terminated on procedural defaults, particularly where the default is satisfactorily explained and where no irreparable prejudice will be occasioned to the opposite party. The administration of justice is not intended to punish parties for genuine mistakes but to facilitate the fair determination of disputes. In the present case, the Respondent neither appeared to oppose the application nor filed any affidavit challenging the factual assertions made by the Applicant. Consequently, the Applicant's explanation remains uncontroverted. Although the Court record does not expressly support the Applicant's assertion that the matter had been rescheduled to 2:00 p.m., the Court is persuaded that, in the peculiar



circumstances of this case, the interests of justice would be better served by affording the Applicant an opportunity to prosecute the execution proceedings on their merits. Refusing restoration solely because the alleged agreement regarding the hearing time was not reflected in the proceedings would risk shutting out a litigant who may have acted upon a genuine understanding shared by both parties but inadvertently omitted from the record. Justice demands that courts should lean, where circumstances permit, in favour of sustaining proceedings rather than terminating them on procedural mishaps, provided that no injustice is thereby occasioned to the opposite party. Any inconvenience that may be suffered by the Respondent can adequately be addressed during the hearing of the restored execution proceedings. Accordingly, I am satisfied that sufficient cause has been shown to justify the exercise of this Court's discretion in favour of the Applicant. Consequently, this application succeeds. The order dismissing Execution No. 30034 of 2025 for want of prosecution made on 13th May, 2026 is hereby set aside. Execution No. 30034 of 2025 is hereby restored for hearing and determination on its merits. As the application has been allowed in the interest of justice and the Respondent did not participate in these proceedings, I make no order as to costs. It is so ordered. K.N. ROBERT JUDGE 29/7/2026

Dated at MWANZA this 29th of July 2026 .



K. N ROBERT

JUDGE OF THE HIGH COURT