

<p>In the Court of Appeal of Tanzania at Dar es Salaam Civil Application No. 181 of 2004 Kaji, J.A</p>	<p>JOYCE BEDA MPINDA VS 1. CRDB BANK LTD AND ANOTHER 2. GWALOGANO ABASI MWASABWITE 3. ERICK AUCTION MART & COURT BROKER</p> <p>Application for restoration of Civil Application No 111 of 2001 from the decision of the Court of Appeal of Tanzania at Dar es Salaam by Kaji, J.A</p>	<p>Strike out of the application under rule 3(2) a of the Court of Appeal Rules, 1979.</p>
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**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO 181 OF 2004

JOYCE BEDA MPINDA.....APPLICANT

VERSUS

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|---|---|--------------------------|
| 1. CRDB BANK LTD AND ANOTHER | } | RESPONDENTS |
| 2. GWALUGANO OBASI MWASABWITE | | |
| 3. ERICK AUCTION MART & COURT BROKER | | |

**[Application for restoration of Civil Application No.111 of 2001
From the decision of the Court of Appeal of Tanzania at Dar es
Salaam]**

(Kaji, J, A.

Dated the 13th December, 2004

In

Civil Application No. 111 of 2001

ORDER

KAJI, J. A.:

By a notice of motion made under Rule 58 (3) of the Court of Appeal Rules, 1979, the applicant, Joyce Beda Mpinda, is moving the Court to set aside the order dismissing Civil Application No.111 of 2001 delivered on 13.12.2004.

In that application the applicant was applying for stay of execution of the decree of the High Court of Tanzania Commercial Division, in Commercial Case No. 67 of 2000 which was delivered by the Court (Dr. Bwana J) on 24.9.2002.

On 13.12.2004 when that application was called on for necessary orders the applicant and her advocate Mr.Mkongwa were absent without notice although served on 01.12.2004. The application was accordingly dismissed under Rule 58 (1) of the Court of Appeal Rules, 1979.

On 28.12.2004 the applicant lodged this application for restoration of the dismissed application.

The hearing of the application could not take off for almost 20 months mainly on the applicant's request for nursing her husband, the 2nd respondent Gwalugano Obasi Mwasabwite, who was sick. On 12.7. 2005 her advocate Mr. Mkongwa withdrew from the conduct of the case.

On 13. 7. 2005 and 28. 7. 2005 the applicant notified the Court through a Mr. Joackim Athanas that she was sick. She later notified the Court in writing about the predicament of her husband the 2nd respondent. This was on 25. 8. 2005. Thereafter she lost contact with the Court. The matter was adjourned on at least three occasions between September 2005 and February 2006, but all in vain.

On 17. 8. 2006 the Court made an order calling upon her to come on 21. 9. 2006 to inform the Court whether she is still

interested in the matter. She had given her contact address as c/o Safe line Company LTD, Makunganya Street, Dar es Salaam.

On 19. 9. 2006 when the process server went to serve her he found an empty office. There was nobody. Since the applicant has not informed the Court where she can now be found, the Court has failed to trace her. Her decision to hide herself and lose contact with the Court is, in my view, an indication that she is no longer interested in the matter. This application cannot remain pending indefinitely. It must come to an end.

Under Rule 3(2) (a) of the Court of Appeal Rules, 1979, I do hereby strike out the application. Each party to bear own costs.

DATED at DAR ES SALAAM this 21 day of September, 2006.

S. N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S.A. N. WAMBURA
SENIOR DEPUTY REGISTRAR

