

31 August 2026



Substantive Justice Must Prevail Over Procedural Technicalities

- Court of Appeal cautions against rigid procedural sanctions
- Bona fide mistake in recording Court date may constitute sufficient cause
- Dismissal for non-appearance should be exercised proportionately

Background

On 27 August 2026, the Court of Appeal of Tanzania (the Court) delivered its judgment in Civil Appeal No. 589 of 2024 concerning the exercise of judicial discretion in setting aside dismissal orders arising from non-appearance.

The Appellant had instituted a land case before the High Court of Tanzania (Land Division) against the Respondent concerning ownership of a property in Mikocheni, Dar es Salaam. When the matter came up for its First Pre-Trial Conference, neither the Appellant nor her advocate appeared. Consequently, the High Court dismissed the suit for non-appearance and struck out the Appellant's reply to the Respondent's counterclaim.

The Appellant applied to set aside the orders, explaining that her advocates had inadvertently recorded the appearance date as 24 August 2023 instead of 21 August 2023. Although the Respondent's counter-affidavit was struck out for being filed out of time, leaving the Appellant's explanation unrefuted, the High Court dismissed the application for lack of sufficient cause. Aggrieved, the Appellant appealed to the Court.

Court's Decision

In a decision emphasizing proportionality and substantive justice in the application of procedural rules, the Court held that although the absence of a counter-affidavit does not automatically relieve an applicant of the burden of proof, an uncontroverted affidavit sworn by an officer of the Court regarding an administrative mistake carries significant weight unless it is plainly absurd or demonstrably false. The Court found that a bona fide mistake in recording a hearing date is a recognized human error capable of constituting sufficient cause for setting aside a dismissal order.

Importantly, the Court found that the High Court had applied an excessively high standard of proof by requiring formal leave applications, travel itineraries and physical or electronic Court records to corroborate the advocates' explanation. The Court emphasized that the applicable standard in civil proceedings is on a balance of probabilities and that procedural rules should facilitate rather than obstruct substantive justice.

The Court further observed that dismissal of a suit for non-appearance is a severe sanction which should primarily be reserved for persistent default, gross apathy or deliberate disregard of Court processes, which were not present in this case. Where non-appearance results from an isolated administrative error, dismissal without determining the matter on its merits may be disproportionate. The Court held that instead of dismissing the entire case, the Judge could have adjourned the matter and imposed costs. The Court expressly faulted the High Court for failing to consider such a less drastic measure. Accordingly, the Court allowed the appeal, set aside the High Court's ruling and orders and remitted the matter to the High Court for continuation of the proceedings before another judge.

The judgment is a significant reminder that judicial discretion in procedural matters must be exercised judiciously and proportionately. While compliance with Court timelines remains essential, an isolated and satisfactorily explained administrative mistake should not necessarily deprive a litigant of the opportunity to have a dispute determined on its merits, particularly where any resulting prejudice can adequately be addressed through costs.

To read the Judgment [click here](#)

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