

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT KIGOMA**

MISC. LAND CASE APPEAL NO. 2 OF 2019

(From land appeal No. 115/2014 Kigoma and Original land Dispute No. 115/2014 of Bugaga Ward Tribunal)

MATIAS S/O LUHANA APPELLATE

VERSUS

MUPIZI MPUZU DEFENDANT

RULING

Date: 27th February, 2020,

Before: Hon. A. K. Matuma, J.

This appeal has been pending in this Court since 21st day of August, 2019 when it was filed on 28/8/2019 this Court ordered service to the respondent but since then there is no proof of service.

I have come across the notice of the date of hearing dated 7th November, 2019 which was addressed to the Respondent. The said notice was endorsed by the Ward Executive Officer of Nyumbizwa Ward that;

"Notice hii imeshindwa kupokelewa na Mzee Mpizi Mpuzu kwa kuwa afya ni mgonjwa mahututi asiyejitambua. Hivyo nashauri shauri hili lisogezwe mbele.

Omari Sebabili Afisa Mtendaji Kata Nyumbizwa".

The endorsement of the Ward Executive Officer herein above is dated 18/11/2019. Two days later on 20/11/2019 when this appeal came for mention the appellant was present and addressed the Court that;

"The appellant was served but it appears he is sick according to WEO but I do not believe him".

The Court having heard the appellant as herein above ordered;

"Hearing on 6/12/2019 Respondent to be served and service to be proved by affidavit".

As from such last order of the Court, the matter undergone several adjournments in the absence of the Respondent and at all times the Court has been ordering service to the respondent but in vein.

Today 27/2/2020 when this appeal came for hearing as usual the respondent is absent and no evidence or proof of service of both the appeal documents and the notice for hearing. I have asked the appellant to show cause why I should not dismiss this appeal for want of prosecution for his failure to effect service to the respondent so that this appeal can be determined inter-parties and disposed off.

The appellant Mr. Matias Luhana submitted that at last he took another summons to the District out for them to assist him to effect service but they have returned the summons unsigned. I had an opportunity to read the affidavit of one Fatuma H. Mzingwa who deposed that she received the summons from the appellant to effect service to the respondent on the 20th February, 2020 but did not effect the said service;

*"Nimepeleka kwa **Mapinduzi** s/o Mpuzu Mtendaji amesema hayupo yupo mashamba ya mbali hivyo samansi haikusainiwa".*

From such affidavit, it is quite clear that even the person whom they tried to effect service was not the respondent **Mupizi Mpuzu** but one **Mapinduzi Mpuzu**. Even if it would have been that it was intended **Mupizi** the respondent herein still no effort has been done to effect service to him at the so called "**Mashamba ya mbali**".

The respondent cannot be said to be not available because the dispute between the parties herein is all about a land dispute. Stating that he is not available is like stating that he is not even available in the dispute shamba.

It is my settled view that the duty to effect service to the respondent rests on the appellant. There are several modes of service prescribed in Law and the appellant is required in Law to prove that he dully effected service to the respondent for him to gain locus to argue his case even in the absence of such opponent party.

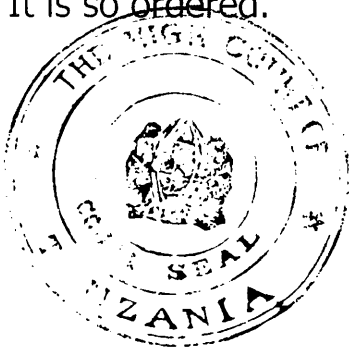
Any failure by the Appellant to effect service would amount to failure to prosecute his appeal as prosecution of the appeal includes effective service of not only the appeal documents, but also the notice on the date of hearing of the appeal or mention for necessary orders as the case may be.

Since the appellant for almost six months has failed completely to effect service and prove the same by affidavit as it was ordered by the Court, I have no whatsoever justification to further adjourn this appeal.

Adjournments are being made with prospective progress in future. We don't adjourn suits, applications or appeals for leisure without any prospective progress. I would in the circumstances, as hereby do hold that the appellant has failed to prosecute his appeal by failure to effect service to the respondent of both **the appeal documents** and **summons** for orders along with **notice of the date of hearing**.

Consequently I do hereby dismiss this appeal for want of prosecution.

It is so ordered.



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A.K. Matuma,
Judge,
27th February, 2020