

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. CIVIL APPLICATION No. 25/2020**

**(Arising from Misc. Land Case Appeal No. 28 of 2019, also Arising from Land Appeal No. 29 of 2017 of the District Land and Housing Tribunal of Mwanza, originating from Land Dispute No. 32 of 2017 of Kiseke Ward)**

**KHAMIS SAID ABDALLA .....APPLICANT**

**VERSUS**

**LUCAS KALAGILE .....RESPONDENT**

**RULING**

**28<sup>th</sup> July, 2020**

**TIGANGA, J.**

Misc Land Case Appeal No 28 of 2019 was dismissed for want of prosecution on 10/03/2020, following the absence of the appellant.

Following that order, on 27/03/2020 the applicant through the service of Mr Erick Martin Mutta, Advocate filed an application for re admission of the appeal. The same was filed under Order XXXIX Rule 19 of the Civil Procedure Code [Cap 33 RE. 2019]. It was filed by a chamber summons and supported by an affidavit sworn and filed by Mr. Erick Martin Mutta, Advocate. In the supporting affidavit the deponent has narrated a series of facts, cumulative of which, are taken to be the cause of dismissal of the appeal.





He traced the history since when the matter was before Hon. Mdemu, J, before he was transferred to another duty station and the same assigned to Hon. Siyani, J, before he also got transferred to another duty station and last the matter reassigned before me. He narrated how he made follow up to the office of the Deputy Registrar and the answer he was getting, and later on to the registry where at last he was informed that the appealed was re- assigned to me and was to be called for hearing on 10/03/2020.

It is his submission that, when he appeared in court together with his client he stayed in court without his appeal to be called and when he asked the court clerk the court clerk told him that the case was not scheduled on that day. However, on further follow-up thereafter, it was revealed that on that very date the appeal was dismissed.

It is his prayer that since the dismissal of the appeal was due to miscommunication, he prayed the court to take his non appearance to be caused by sufficient cause and that the same be taken to be not caused by the negligence of the appellant or his counsel but miscommunication cause by the court officials.

In the counter Affidavit filed by the respondent he deposed that he was appearing in court alone whenever the matter was called for hearing and that he has herself never missed appearing. He finally put the Applicant to strict proof on the allegations.

At the hearing the applicant was represented by Mr. Erick Muta, assisted by Mr. Kessy advocate, while the respondent appeared in person.





Mr Erick Muta, adopted the content of the affidavit and submitted reiterating the content of the affidavit, which for the purpose of brevity, i will not reiterate in this Ruling under this part. The respondent appeared in person and informed the court that he had nothing to say. He said he had no objection and prayed for a court to examine the application and allow it if it has fulfilled the condition of the law.

Having considered all the submissions and the contents of the affidavit and counter affidavit, the law upon which this application has been preferred, I find that the applicant is required to show sufficient cause as to why he did not appear when the appeal was called for hearing.

Traversing the reasons given in the affidavit and arguments in support of the application, and the facts that the respondent has not objected the application, I find that there are sufficient reasons which prevented the appearance of the appellant on the date when the appeal was dismissed.

That said, the application is granted as prayed, the Misc. Land Case Appeal no 28/2019 is hereby re- admitted. Given the nature of the matter at hand, and the facts that the respondent has no fault in causing the non appearance of the appellant, no order as to costs is made.

It is so ordered.





**DATED** at **MWANZA**, this 28<sup>th</sup> day of July, 2020.

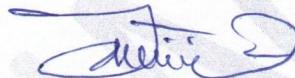


**J. C. Tiganga**

**Judge**

**28/07/2020**

Ruling delivered in the presence of the counsel for the applicant Mr. Erick Mutta and the respondent in person.



**J.C. Tiganga**

**Judge**

**28/07/2020**