

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBEYA**

**LAND REFERENCE NO. 02 OF 2020**

(From Bill of Cost No. 07 of 2020 in the High Court of Tanzania at Mbeya.)

**RAMADHANI M. LANDA.....APPLICANT**

**VERSUS**

**AMON NDELELA SIMBEYE.....RESPONDENT**

**RULING**

Date of Hearing: 01/10/2020  
Date of Ruling : 16/10/2020

**MONGELLA, J.**

This application is filed under Rule 7 (1) of the Advocates Remuneration Order, 2015 G.N. No. 264 of 2015. It is a result of the applicant's dissatisfaction with the decision of the Taxing Master dismissing his application for want of prosecution in Bill of Costs No. 07 of 2020. The applicant is thus seeking for this Court to rectify impropriety of procedure in Bill of Costs No. 07 of 2020 and for the said decision to be quashed. Both parties appeared in person and argued the application orally.

In his affidavit in support of the application, as well as in his oral submission, the applicant stated that when the Bill of Costs was filed, a summons was



issued to the parties on 10<sup>th</sup> March 2020 notifying them of the date fixed for mention, which was 19<sup>th</sup> March 2020. He said that on the said date, that is, 19<sup>th</sup> March 2020 he failed to appear in court following a car accident he suffered while he was on his way to the court. He said that in the said accident his right leg got injured and he attended Sheyo Dispensary for treatment. He presented hospital documents to prove that he was sick. He then came to court on 25<sup>th</sup> March 2020 and found that his case was dismissed.

In reply, the respondent had nothing much to say than that he did not believe in the medical documents presented by the appellant. He just prayed for the matter to be dismissed.

In resolving this matter, I took the trouble to go through the record in Bill of Costs No. 07 of 2020 before the Hon. Deputy Registrar. The record reveals that the matter was filed in court on 21<sup>st</sup> January 2020. It came for the first time before the Hon. Deputy Registrar on 6<sup>th</sup> March 2020 whereby neither of the parties attended. Orders were given to the effect that the matter shall come for mention on 19<sup>th</sup> March 2020 and parties to be notified. It appears from the record and the submission by the applicant that parties were notified.

On 19<sup>th</sup> March 2020 when the matter was called for mention, again both parties did not appear. The Deputy Registrar made an order that the matter shall come for mention on 23<sup>rd</sup> April 2020. However, on the same date, later at 10:15 hours, the record indicates that the respondent appeared informing the court that he has been served by the applicant



to appear for case. He then proceeded to make prayers that the suit be dismissed as the applicant was absent. The court took note of the applicant's absence and dismissed the application for want of prosecution.

The law as clearly provided under **Order IX of the Civil Procedure Code, Cap 33 R.E. 2019** provides for consequences on non-appearance of the parties on the date fixed for hearing. With regard to the non-appearance of the plaintiff or an applicant, like in the matter at hand, **Order IX Rule 8 of the Civil Procedure Code** provides that when the defendant (or respondent as the case may be) appears and the plaintiff/applicant does not appear when the suit is called on for hearing, the court shall make an order that the suit be dismissed. My understanding of this provision therefore is that, a suit can only be dismissed when the matter has been fixed for hearing.

The record in the case at hand, as I have narrated above, shows that on 19<sup>th</sup> March 2020, the application was fixed for mention and not hearing. Before even the respondent appeared later in court, the court had already fixed another date for mention which was 23<sup>rd</sup> April 2020. In my considered opinion, even if both parties had appeared on time on 19<sup>th</sup> March 2020, the matter would not have proceeded to hearing as it was not scheduled for that. A date for hearing would have been fixed to accord parties an opportunity to prepare for the hearing. In my considered view therefore, it was incorrect for the Deputy Registrar to reopen the proceedings after setting a date for mention on 23<sup>rd</sup> April 2020



and dismiss the applicant's application. By doing so, the applicant's right to fair hearing was prejudiced.

Having observed as above, I set aside the dismissal order dated 19<sup>th</sup> March 2020. I order the applicant's application in Bill of Costs No. 07 of 2020 to proceed to hearing on merits. Each party to bear his own costs of the suit.

Dated at Mbeya on this 16<sup>th</sup> day of October 2020.

  
**L. M. MONGELLA**

**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 16<sup>th</sup> day of October 2020 in the presence of both parties appearing in person.

  
**L. M. MONGELLA**

**JUDGE**

