

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 84 OF 2020

(Arising from Misc. Land Appeal No. 31 of 2018)

MAGDALENA WEREMA CHACHA..... APPLICANT

VERSUS

CHRISTINA LUCAS MARANYA..... RESPONDENT

RULING

17th Febr. & 26th March, 2021

RUMANYIKA, J.:

The application is for restoration of Misc. Land Case Appal No. 31 of 2018, according to records dismissed on 11/09/2018 for nonappearance of Magdalena. It is brought under Order XXXIX Rule 19 of the Civil Procedure Code Cap 33 R.E. 2019 supported by affidavit of Evangel Onyango Otieno whose contents essentially, Ms. N. Magoti learned counsel for the applicant adopted during the hearing. Partially though, Christina Lucas Maranya (the respondent) appeared.

When, by way of audio teleconferencing the matter was called on 17/02/2021 for hearing, the parties were online except the respondent who, immediately chose to, and she just muted. For avoidance of doubts

parties were heard through mobile numbers 0759037033 and 0756072799 respectively.

I think it is equally important at this stage to hold that when through the means supplied by him, in this case the respondent's mobile number a party was no doubts duly served, it being for the reason of poor network, battery charge being low, noisy atmosphere or anything reasonably within control of the defaulting party, the latter shall be deemed as having absented himself in which case therefore, the provisions applicable for nonappearance of the parties shall apply **mutatis mutandis**.

Ms. N. Magoti learned counsel submitted that in fact when, on the fateful day the appeal was called on for hearing, Mr. Otieno learned counsel for the appellant (now the applicant) he was caught up at Sekou Toure hospital in town attending his sick child (copy of the medical chit(s) Annexed) and, for that reason the latter had Mr. B. Saliro, advocate in court holding the briefs. The reason for failure of the applicant's advocate constituted a sufficient ground the learned counsel further contended.

The issue is whether the applicant has assigned a sufficient ground for restoration of the appeal.

The applicant's counsel one Otieno may have had the family emergency case to attend yes, but the court was not told how did the advocate knew that Mr. B. Saliro advocate was now in the court corridors and asked him to hold the briefs. What a coincidence! Moreover, it was common knowledge and, in the impugned order I made it very clearly that in order for courts of law to avoid flimsy adjournments of cases, advocates who appeared only holding fellows' briefs without instructions to proceed had no room any further unless there were such exceptional circumstances. Looking at the supporting affidavit no such peculiar circumstances were even proposed.

Without prejudice to the foregoing both the applicant's diligence and militancy and therefore the extent of delay equally matters. Upon demonstrating sufficient grounds for the delay for 12/05/2020, the applicant may have been granted by this court (Ismail, J) extension of time yes, but he lodged the instant application say three (3) good months later i.e on 13/08/2020. Without explanation for the delay therefore, it cannot be said that the applicant was militantly committed to seeing the matter getting to end the soonest much as courts of law are enjoined powers to discourage endless litigation.

The application is dismissed. Each party shall bear their costs because apparently the respondent neither filed any documents nor even once he appeared.

Right of appeal explained.

S. M. RUMANYIKA

JUDGE

05/03/2021

The ruling is delivered under my hand and seal of the court in chambers this 16/03/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

16/03/2021