

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO 101 OF 2020

(Arising from order of this Court in Land Appeal No 25 of 2020 delivered on 1st day of October, 2020 before S.M. Rumanyika, J.)

PASCHAL MALIYATABUAPPLICANT

VERSUS

EMMANUEL MARCORESPONDENT

RULING

26 /02 & 13/04/2021

RUMANYIKA, J.

With respect to the dismissal of the appeal on 01/10/2020 for want of appearance of Paschal Maliyatabu (the applicant) the latter now applies under Orders XXXIX and XLIII Rules 19 and 2 respectively also Section 95 of the Civil Procedure Code Cap 33 RE. 2019 for the same. It is supported by affidavit of Paschal Maliyatabu whose contents the applicant adopted during the hearing. The later appeared in person. Mr. A. Nasimire learned counsel appeared for Emmanuel Marco (the respondent).

The applicant in a nutshell having had narrated its historical background and submitted that on his way to court on the fateful date having had stacked at about 8:00 am at Kamanga Ferry and arrived as late as at about 9:40 and he learnt from a court clerk that on that basis the appeal had just been dismissed and was not happy, he, within the 1st three weeks undertook to set aside the impugned dismissal order, here he is. That is, it.

Mr. A. Nasimire learned counsel adopted the contents of the respondent's counter affidavit he submitted that the application fell short of merits therefore liable to be dismissed with costs for two (2) reasons; **(1)** that having had been duly notified the applicant should not have risked to travel all the way from Buseresere to court on the same hearing date **(2)** that the applicant shouldn't have that long stacked at Busisi Ferry because there had been alternative Ferries that the delay was only caused by the applicant's negligence.

The bottom line, and issue is whether the applicant has assigned a sufficient ground for setting aside the dismissal order.

I would agree with Mr. A. Nasimire learned counsel that perhaps due to both the geographical location and unreliability of the transport and

transportation between Buseresere and the court the applicant should not have risked to travel the very morning nevertheless with all fairness I would with greatest respect not agree with the learned counsel that the applicant acted negligently because having had well within time lodged the appeal, but the same dismissed on 1/10/2020 and he wasn't happy, the applicant lodged the instant application just on the 20th day of the dismissal order. With the above demonstrated promptness it would seem to me that the applicant was militantly committed to seeing some meritorious results of his appeal under the obtaining circumstances. Much as it wasn't Mr. Nasimire contention that the applicant didn't at all turn up on the fateful date.

The application is granted. Each party shall have their costs. It is accordingly ordered.

Right of appeal explained.



S. M. RUMANYIKA

JUDGE

05/04/2021

The ruling is delivered under my hand and seal of the court in chambers this 13/4/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

13/04/2021