

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

Misc. LAND CASE APPLICATION No. 97 OF 2020

*(Arising from the High Court (Bukoba District Registry) in Misc. Land Case
Application No. 82 of 2019 and the District Land and Housing Tribunal for Muleba
at Muleba in Application No. 51 of 2018)*

ABUBAKARI MOHAMED ----- APPLICANT

Versus

GODWINE HENERICO ----- RESPONDENT

RULING

**02/03/2021 & 29/03/2021
Mtulya, J.:**

This is an application for re-admission of **Misc. Land Case Application No. 82 of 2019** (the Misc. Application) which was dismissed by this court on 25th November 2020 for want of prosecution. The Application was preferred by Mr. Abubakari Mohamed (the Applicant) who registered three (3) reasons to persuade this court to decide in favour of the Application as depicted in the fourth, eighth and tenth paragraphs of his Affidavit, viz: court practices during COVID-19 pandemic, diligence in following up the Misc. Application, and claim of illegality.

When the Application was scheduled for hearing, the Applicant as a lay person, had little to explain in this court. He briefly

submitted that the Misc. Application was dismissed on 25th November 2020 while he was in this court on 24th November 2020 for mention before Deputy Registrar. However, on 24th November 2020, the Misc. Application was not scheduled before Deputy Registrar for mention, but was set for hearing before a judge on 25th November 2020. To substantiate his allegation, the Applicant submitted that there was confusion on dates of mentioning and hearing of cases during the COVID-19 pandemic and registered attachment AM1, a copy of visitors' attendance register book of this court, to show that he was present in this court a day before the Misc. Application was dismissed for want of prosecution. According to the Applicant, he was diligent in following up his Misc. Application in this court.

The Applicant has also registered a claim of illegality in his tenth paragraph of the Affidavit contending that the **District Land and Housing Tribunal for Muleba at Muleba** (the Tribunal) in **Application No. 51 of 2018** (the case) was tainted with discrepancies which need to be challenged in an appeal for straight record of the case. According to the Applicant, the Tribunal blessed the decision of the Ward Tribunal which had no signature of members and two of the members were relatives to the Respondent.

The Applicant's submission was protested by Mr. Godwine Henerico (the Respondent) who submitted that the Misc. Application was scheduled for hearing on 25th November 2020 and the Applicant did not register his presence hence learned judge dismissed the Application for want of prosecution. According to the Respondent, the learned judge determined so in his mandate and he supports him for the decision.

On my part I think the law regulating re-admission of suits in this court is enacted in Order XXXIX Rule 19 of the Civil Procedure Code [Cap. 33 R.E. 2019] (the Code). The Applicant is seeking re-enrolment of the Misc. Application Code. The law requires the Applicant to show that he was prevented by sufficient cause from appearing when the suit was scheduled for hearing. The question on what amounts to sufficient cause, has been partly answered by the Court of Appeal that it depends on circumstances of each case and ability of applicants to persuade courts to exercise their discretionary powers to decide in their favour (see: **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010 and **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987).

In the present Application, the Applicant has registered three reasons, *viz*: court practices during COVID-19 pandemic, diligence in following up the Misc. Application, and the claim of illegality. I am well aware that during COVID-19 early and mid last year, 2020 there was a state of emergence and confusion in this country, and this court is not an island. It was also part of the chaos and affected with the waves. It had to cope with the new situation hence it laid in place appropriate measures since then to late 2020, which affected not only the parties in dispute who had filed their suits in this court, but also the court staff. Some of the cases were called for mention and adjournments in our court lobby and it was possible to invite confusions to the parties.

It is fortunate that this court had put in place visitors register book and the Applicant signed it on 24th November 2020 showing his vigilance in following up his Misc. Application. Therefore, the Applicant cannot be blamed as he was prevented by the measures drafted by this court and confusions caused by the pandemic COVID-19. This factor was beyond the control of the Applicant and may be considered to be part of the good causes (see: **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4

of 2017 and **NBC Limited and Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019).

In any case, where there is a claim of illegality of a challenged decision of lower courts or tribunals, the claim alone may constitute sufficient reason for re-admission of the suits in search for proper application of the law, straight record of the court and justice between the contesting parties (see: **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017).

Having said so and considering the Applicant is vigilant in following up is Application save for challenges of COVID-19 and confusions emanated from measures introduced by this court to control the pandemic, I think the Misc. Application may be re-admitted. I have therefore decided to re-admit the **Misc. Land Case Application No. 82 of 2019** which was dismissed by this court on 25th November 2020 for want of prosecution. Costs in due course.

It is so ordered.




F.H. Mtulya

Judge

29.03.2021

This Ruling was delivered in chamber under the seal of this court in the presence of the Applicant Mr. Abubakari Mohamed and in the presence of the Respondent, Mr. Godwine Henerico.




F.H. Mtulya

Judge

29.03.2021