THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

MISC. LAND APPLICATIN NO. 19 OF 2020

(C/F High court Misc. Land Appeal No. 51 of 2018, Babati District Land & Housing Tribunal Appeal No. 32 of 2017 and Gehandu Ward Tribunal Application No. 46 of 2016)

YAMAI MATLE..... APPLICANT

Versus

ELIZABERTH AQWESSO.....RESPONDENT

RULING

24/02/2021 & 09/04/2021

MZUNA, J.:

The applicant's appeal was on 24th February 2020 dismissed for non-appearance. The present application is a move to restore the same. The main issue is whether the applicant has demonstrated sufficient cause for non appearance on the date when the same was dismissed?

The reasons for non appearance, according to the applicant who appeared in person was due to the fact that he was sick. That he attended treatment at Hanang' District Hospital. He annexed copy of the letter as proof thereof. He therefore prayed for the court to restore the application because

according to him he stands a great chance of success. Above all that even the respondent had been defaulting on the previous dates.

As opposed to that view, the respondent who is defended by Mr. Benson Mhango, the learned counsel said that the applicant had been defaulting even before, notably on 17 September, 2018; 25th February, 2019; 17th April, 2019; 18th June, 2019; 13th August 2019 and 24th February 2020. Second that the record shows he was represented by Magesa Advocate. That their non-appearance shows negligence on their part. Thirdly that the annexed Hospital document is a mere letter which can be manufactured and is therefore not proof that indeed he was sick. That in the absence of medical chit and receipt showing that he paid for Hospital service, his story cannot be believed. He prayed for the application to be dismissed.

In his rejoinder, the applicant said that he failed to attend in the previous dates because he was nursing his sick mother at Hydom. That on the date when the matter was dismissed, he was given a letter because he was told he cannot be given medical chits unless and until he was admitted in Hospital which was not the case, as he had to undergo some injections only. Responding to the non appearance on previous dates, he said that the advocate never attended. Previously he gave him false information that he

used to attend while it was not true that is why he decided to do away with him.

Now, the question is, has the applicant demonstrated sufficient cause? Order XXX1X Rule 19 of the Civil Procedure Code, Cap 33 RE 2019 to which this application relates, reads:-

> *"Where an appeal is dismissed under subrule (2), of rule 11 or rule 17 or rule 18, the appellant may apply to the Court for the re-admission of the appeal; and,* ***where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing*** *... the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit."*
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> (Emphasis mine).

That provision provides that court can re-admit a dismissed appeal for default provided that the applicant was prevented by "any sufficient cause from appearing".

Reading from the filed affidavit and the advanced reasons, the applicant has advanced sufficient cause for non appearance on the date when the matter was fixed for hearing because he was sick. The counter affidavit has not shown that indeed he was not sick. The defect not to annex medical chits or receipts cannot disprove that he was sick based on the annexed

letter dated 28th February, 2020 which is signed by the Doctor. I say so because the application was brought without undue delay. The appeal was dismissed on 24th February, 2020, the present application was filed on 12th March, 2020. He acted promptly. The respondent has not said if she will be prejudiced and if so how, if this application is allowed.

To deny a party a right to the hearing is against one of the cardinal principles of natural justice of right to be heard and against our Constitution. Article 6 sub (a) of the United Republic of Tanzania Constitution 1977 (as amended) reads:-

(6) Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, Mamlaka ya Nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba–

(a) wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa mahakama au chombo kinginecho kinachohusika, ***basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu, na pia haki ya kukata rufaa au kupata nafuu nyingine ya kisheria kutokana na maamuzi ya mahakama*** *au chombo hicho kinginecho kinachohusika..."*

(Underscoring mine).

The appellant has a right to be heard in his appeal. To do otherwise will be against the spirit of the Constitution. More so because he has

demonstrated *"sufficient cause from appearing when the appeal was called on for hearing."*

For the above stated reasons, this application is allowed. The dismissed High Court Miscellaneous Land Appeal No.51 of 2018 is hereby restored. Costs to be in the cause.

By Order.

M. G. MZUNA,
JUDGE.
09/04/2021