

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION No. 01 OF 2021

(Original Misc. Land Application No. 08 of 2019)

COSMAS TIKIAPPLICANT

VERSUS

AGRIPINA A. NYAMBURIRESPONDENT

RULING

22nd April & 17th May 2021

TIGANGA, J.

In this review application, this court has been asked to review its decision dated 02nd December, 2020 in which the court refused an application seeking for an order for extension of time and re admission of HC Land Appeal No. 03/2013 which was dismissed for want of prosecution.

The base as to why the application No. 08/2019 was dismissed is that, in the application for extension of time, the applicant said the matter was dismissed for want of prosecution because he was misled by the letter written by the District Registrar of the High Court to the Kiabakari



village authority directing that authority to reconcile the party and settle the dispute between them.

According to the applicant in this application who was the applicant in Misc. Land Application No. 08/2019, and the appellant in Land Appeal No. 03/2013, the village authority reconciled the parties and the matter was settled. It was his expectation therefore that the village authority communicated the verdict to the District Registrar of the High Court, but seemingly the village authority did not do so in time. Failure to communicate in time led to the Hon. appellate Judge to dismiss the Land Appeal No. 03/2013 for want of prosecution following failure of the appellant to attend and prosecute his appeal.

To the great extent the main reason as to why the extension of time in Misc. Land Application was sought was that the appeal was dismissed without knowledge of the applicant, as his understanding was that, the dispute had already been settled by the Kiabakari Village Land Council chairperson acting on the directive of the District Registrar of the High Court. Following that letter parties were summoned and through the resolution passed on 06/04/2014 and signed by 14 members of the village land council, resolved the dispute between the parties.



Having understood that the dispute was settled at the village level, the applicant ceased to attend to the High Court on the understanding that the Village Land Council communicated the result to the District Registrar but to his surprise, the applicant came to learn later that, the appeal was dismissed.

Following that discovery, the applicant applied for restoration of the dismissed appeal, but before doing so, he first applied for extension of time to be allowed to set aside the dismissal order and restore the appeal.

Thinking that the letter written by the District Registrar and the resolution passed by the Village Land Council were filed in the case file, the applicant therefore did not attach the two documents with the application for extension of time. Following that lacking, the application was dismissed for want of good cause for extending time.

Following that dismissal, the applicant filed this application asking the court to review its decision basing on the reasons advanced in the affidavit filed in support of the application are as follows; that this court inadvertently did not see and notice the said letter and the resolution of the Village Land Council in resolving the dispute between the parties.



However he later after the application was dismissed, discovered that the two documents were not in the case file but in an administrative file, that is why the court did not see them.

When the application was filed, the same was served to the respondent who indorsed on the summons that, she received the summons, that she would not attend because she had no fare and she was sick. However, she had personally or through any other person never made any follow up of the application at hand. Following that state of affairs, the application was heard *ex parte*.

Mr. Felan Kweka, learned Advocate appeared representing the applicant whereas the respondent did not appear at all. In his submission in support of application, Mr. Kweka learned counsel submitted reiterating what has already been put clear above as reckoned from the memorandum of review, he submitted that, after he discovered that the application was dismissed for want of good cause, he made follow up to the office of the Registrar to be availed with a copy of the said documents. He was consequently given a copy of that letter and filed this application attaching the said documents.



He further submitted that even the resolution of the village land council, was sent to the District Registrar; he was also so supplied and attached the application with the said documents. He in the end asked for this court to review its decision and find that the applicant had concrete reasons for the application No. 08/2019 to be granted. He in the end prayed for the Ruling of this court dated on 02/12/2020 to be revised for the reasons given.

That being a summary of what the counsel for the applicant submitted in respect of the application. I find it pertinent to refer the provision upon which this court has been moved, that is section 78 and Order XLII Rule (1) (a)(b) of the Civil Procedure Code [Cap 33 R.E 2019].

Section 78 provides as follows;

"Subject to any condition and limitation prescribed under section 77 any person considering himself aggrieved:-

- a) by the decree or order from which an appeal is allowed by this code but from which no appeal has been preferred or*
- b) by a decree or order from which no appeal is allowed by this code.*

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it think fit"

Order XLII Rule 1 (1) (a) and (b) also provides that;

Any person considering himself aggrieved.

- a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred, or*
- b) by a decree or order from which no appeal is allowed and who, from the discovery of new and important matter or evidence which, after the exercising due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain review of the decree passed or order made against him may apply for a review of judgment to the court which passed the decree or made the order"*

From these provisions, it is clear that this court has jurisdiction to entertain the application for review of its own decision or order whether the same is appealable or not but for which no appeal has been preferred.

That may be done upon application made by a party considering himself aggrieved by the said decision sought to be reviewed.

That may be done in the following circumstances;

- i. After the applying party had discovered new and important matter or evidence which, after the exercise of due diligence was not in his knowledge or could not be produced by him at the time when the decree was passed or order made or,
- ii. On account of some mistake or error apparent on the face of the record, or
- iii. For any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the court which passed the decree or made the order sought to be reviewed. In this application the reasons and ground for review were that the evidence which was a letter written by the District Registrar to the Kyabakari village Land Council was not brought to the attention of this court when it heard and decided the application for extension of time.

Now, looking at the reasons given in this application and reasons in the ruling which refused Misc. Land Application No. 08/2019, I entirely agree that the application was refused mainly on the ground that the applicant failed to produce a copy of the letter in question and prove that

such letter was actually written by the District Registrar of this court and its content misled the parties.

It means that, that letter was a vital evidence which, had it been brought to the attention of the court, would have changed the decision of the court. Now that it has been brought to the attention of the court, after reading its content, I find the same to have the same effect as alleged by the applicant.

I have reviewed the said letter which was attached to the application at page two of the letter, the learned District Registrar directed as follows;

"..... kwa mantiki hiyo mienendo yote hiyo haikuwa sahihi kwa kuzingatia mintarafu kuwa uongozi wa kijiji chenu unalijua swala hili vizuri, mnaagizwa kusikilizea upya shauri hilo kwa makini"

Plainly interpreted, the letter gives directives that,

"..the proceedings of both lower tribunals, (the Ward Tribunal and District Land and Housing Tribunal) were not correct, it is clear that the village authority knows that very well. You are directed to re hear this case carefully....."

Properly constructed, this is a directive to the village authority to hear the case and resolve the dispute. To the lay person, this may mean that



there was no longer a case before the High Court and the facts that the parties appeared before Village Land Council which reconciled them and resolved the dispute via a resolution also attached to the application at hand portrays good reason for non attendance which, had these two documents containing these information been shown to the court, at the hearing of the application, the results in Misc. Land Case Application No. 08/2019 would have been different.

For the reasons given hereinabove, I find the applicant to have made a good case for review. I therefore review the Ruling in Misc. Land Application No. 08/2019, dated 02/12/2020, and make an order that the application for restoration of Land Appeal No. 03/2013 is made, the said Appeal be called for hearing as soon as practicable.

It is so reviewed and ordered.

DATED at **MWANZA** on this 17th day of May, 2021.



J.C.Tiganga

Judge

17/05/2021

Ruling delivered in the presence of the counsel for the parties on line
via audio conference. Right of appeal explained and guaranteed.



J. C. TIGANGA

JUDGE

17/05/2021



ORIGINAL