

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 45 OF 2021

JULIUS MASAWE & 14 OTHERSAPPLICANTS

versus

RELI ASSETS HOLDING CO. & 2 OTHERS.....RESPONDENTS

RULING

30th June & 8th July, 2021

RUMANYIKA, J:

The application is for restoration of Land Cause No. 10 of 2019, pursuant to provisions of Order IX Rule 8 of the Civil Procedure Code Cap. 33 RE 2019 dismissed on 12/04/2021 for want of prosecution. It is supported by affidavits of Msafiri Aloyce Henga and Revocatus Alexander Sepetu whose contents essentially Mr. Ngofilo Masanja learned counsel for Julius Masawe and 14 Others (the applicants) he adopted on 07/01/2021 during audio teleconference hearing. Ms. Subira Mwandambo and Mweneyuni learned state attorneys appeared for Reli Assets Holding

Company Ltd. Attorney General and Mwanza City Council (the 1st, 2nd and 3rd respondents) respectively. I heard them through mobile numbers 0756906406, 0717209004 and 0769107068 respectively.

Mr. N. Masanja learned counsel submitted that in fact when the appeal was called on 15/03/2021 for necessary orders, the presiding judge was absent until on a later date when they were notified that now the appeal comes up on 15/04/2021 only for necessary orders but then, surprisingly they were notified that the appeal had been called off on an earlier date therefore without notice dismissed much as the pleadings were not yet complete because the respondents had not even served them with an amended written statement of defence. We humbly submit and pray for the interest of justice, the learned counsel further contended.

Having had adopted contents of the counter affidavit, Ms. Subira Mwandambo learned state attorney she stated that the application lacked merits but only delaying tactics therefore liable to be dismissed with costs as no sufficient grounds were stated. That for avoidance of spread of the Corona Pandemic not only no formal notices could have been issued, but also Mr. Godfrey Martin advocate for the applicants was, through hand set sufficiently notified by the bench clerk and the learned state attorney as

the former had appeared last and was within the court premises served with copy of the amended written statement of defence. In that regard leave alone the missing affidavit of the said Godfrey Martin (case of **Sebena Technical Dar es Salaam Ltd vs. Michael J. Luwunzu**, Civil Application No. 451 of 18 of 2020 (CA) unreported.

Mr. Mweneyuni learned state attorney only adopted submissions of Ms. Subira Mwandambo learned state attorney. That is all.

On rejoinder, Mr. Ngofilo Masanja learned counsel submitted that there was no proof of service on the alleged Mr. Godfrey Martin much as, on the fateful date the letter may have had been on the court premises not for Land Case No. 10 of 2019 but for some other matters as the applicants had been militantly committed to see the case getting into end.

Questioned by court for clarity the learned counsel submitted as that the Land case was dismissed on 12/04/2021, they became aware of it three (3) days later and lodged the instant application on 5/5/2021 say 21 days later such that according to provisions of the Code, still the applicants had seven (7) good days to go.

At least it is undeniable fact that when the backlog case was called on for necessary orders but dismissed on 12/04/2021, the applicant's counsel was not in court. The issue is whether there was proof of service on the latter so much so that pursuant to provisions of Order IX Rule 8 of the Code the applicants may be blamed to the extent of having had their case been dismissed for want of prosecution with all fairness the answer is no for four main reasons; (i) through cellular phones the Bench clerk and Mr. Godfrey Martin advocate may have had sufficiently communicated on the would be date for necessary orders yes, but the respondent's attorneys did not, in the counter affidavit sufficiently prove that in deed only Godfrey Martin was reached and accordingly informed much as I would agree with Ms. Mwandambo learned state attorney that unlike in the past days, this time around the case was called on only through the digital platform (ii) The respondents' learned attorneys did not sufficiently dispute the fact that always the applicants had been committed to see case getting into end much as following the dismissal order, the latter instituted the instant application within time prescribed by the law (iii) Without prejudice to all the above stated, with all intents and purposes and balance of conveniences if the application was granted no party would be prejudice.


(iv) If, only for the interest of justice a combination of the above three stated reasons it brought the same results and it counted the last wake up call to the applicants' counsel so much the better.

The application is granted. For avoidance of doubts therefore, Land Case No. 10 of 2019 is restored and set for expeditious determination. Each party shall bear their costs. It is so ordered.


S.M. RUMANYIKA
JUDGE
08/07/2021

The ruling delivered under my hand and seal of the court in chambers this 08/07/2021 in the absence of the parties.




S.M. RUMANYIKA
JUDGE
08/07/2021