



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

MISC.LAND APPLICATION NO. 16 OF 2020

VICTORIA PAULO.....APPLICANT

VERSUS

**APPOLINARY MUSHUMALI.....1st RESPONDENT
SHUKURU GASPARY KAPERA.....2nd RESPONDENT**

***(Application for setting aside dismissal order of 27/2/2020
made by this court in Land Appeal No.7 of 2018)***

RULING

6 & 8 July, 2021

MGETTA, J:

Before me, is an application for setting aside the dismissal order for want of prosecution which was made by this court before Hon. Bahati J, on 27/02/2020. The application was preferred under **Section 51 (1) of the Land Disputes Court Act Cap 216 and Order IX Rule 6 of the Civil Procedure Code, Cap 33** as amended. It is supported by affidavit sworn by Johachim Rwechungura, applicant's legal representative.

When invited for oral submission, Ms. Theresia Bujiku, the learned advocate for the applicant adopted the affidavit which, she submitted, contained sufficient cause for non-appearance as per paragraph 4 to 5 where it is stated that Johachim Rwechungura appeared in court on 25/11/2019 representing the applicant and that the case was adjourned until 16/13/2020. When he came to court on 16/3/2020 he was told that the case had already dismissed for want of prosecution on 27/2/2020.

The learned advocate stated that the applicant did not abandon the case, but that happened due to confusion of the date scheduled for hearing of appeal. Hence, the applicant had a sufficient cause for non-appearance on the date scheduled.

The Respondent has refuted the prayers for restoration of the dismissed appeal as it has no merit. To amplify what was stated in his counter-affidavit, he contended that he is coming in court now and then but the applicant does not appear. He stated further that the applicant stays at Maruku area which is nearby, while he himself resides far way in Karagwe. He added that if the appeal is restored, he will be put in disturbance.

In a rejoinder, Ms Theresia submitted further that every party is seeking justice and spending money. She was of the view that the appeal should be restored so that parties be heard on merit.

Having heard the oral submissions of both parties and passed through the entire record of this application, I am now constrained that the point of consideration which this court is now called upon to determine is whether the applicant had a sufficient cause for non-appearance.

The applicant's learned advocate submitted that the applicant had a sufficient cause for non-appearance which was due to confusion of scheduled dates. The respondent oppose that the applicant had no sufficient cause as she was negligent in appearing in court. In order to shut this discourse, I found it imperative to extract and quote some of the proceedings of the dismissed appeal in Land Appeal No.7 of 2018 to see what transpired before it was dismissed.

Date 25/11/2019

Coram: Hon.J.P. Kapokolo, Ag DR

Appellant: Johackim Rwechungura

1.Respondent: Present

2.Respondent: Absent

B/Clerk-A. Kithama

Order: Hearing on 16/3/2020

SGD

Ag. DR

25/11/2019

Date:6/1/2020

Coram: Hon. Kairo, J

Applicant: Absent

Respondent: Absent

B/C: Kithama

Court: The matter is hereby re-assigned to Hon. Bahati, J, a newly appointed Judge posted to Bukoba high Court Zone.

SGD

L.G. Kairo

Judgei/c

6/1/2020

Date 27/2/2020

Coram: Hon.A.A. Bahati, J

Appellant: Absent

Respondents 1. Apolinary Mushumali-P/In person

2. Absent

B/C A. Kithama

Court: This matter has been re-assigned to me after being placed at Bukoba High Court.

Appellant: Absent Nowhere to be found

Respondent: Present

Court: This matter is dismissed for want of prosecution.

Order: Appeal dismissed.

SGD

A.A. Bahati

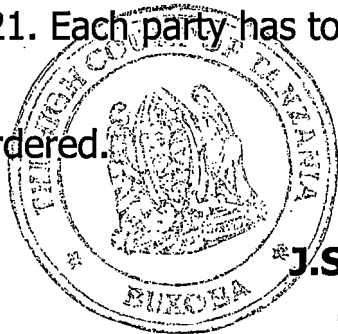
27/2/2020

From the above reproduced proceedings, I observed that the last scheduled dates which was ordered that the case would come for hearing in presence of both parties was on 16/3/2020. The record shows that the date of 27/2/2020 when the case came before the assigned judge and eventually dismissed for want of prosecution, the applicant was not notified. A thorough scrutiny of the record reveals that even the summons which was issued by the Deputy Registrar on 29/1/2020 calling and or notifying the applicant to come for hearing on 27/2/2020 never reached her as it was returned with an endorsement of VEO that the applicant was nowhere to be seen as he resides in Bukoba Municipality. It is therefore confirmed that the applicant did not receive a summons informing her on the new date.

By all standards, the applicant could not have known the hearing date of 27/2/2020 upon which his appeal was dismissed. I am therefore inclined to agree with the applicant contention that she was confused by the court on the scheduled date and therefore her non-appearance was out of his control. In my view, the applicant has therefore demonstrated sufficient cause for her nonappearance on 27/2/2020.

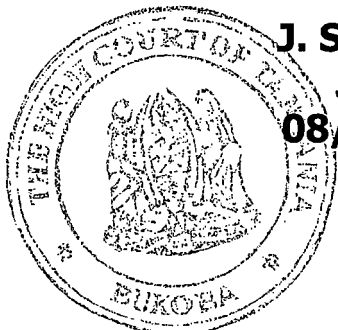
In the upshot, I find this application to be meritorious and grant the same. I hereby set aside the dismissal order of 27/2/2020 in Land Appeal No.7 of 2018 and order its restoration forthwith. Hearing of the restored shall be on 25/8/2021. Each party has to bear its own costs.

It is so ordered.




J.S.MGETTA
JUDGE
08/07/2021

COURT: This ruling is delivered today this 8th July, 2021 in the presence of both parties in person.




J. S. MGETTA
JUDGE
08/07/2021