

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 23 OF 2020

(Arising from the High Court of the United Republic of Tanzania at Mwanza District Registry in Land Appeal No. 25 of 2019).

EDWARD SAMSON.....APPLICANT

VERSUS

ALOYCE KAMILI..... 1ST RESPONDENT

JOSEPH NYAMUBI.....2ND RESPONDENT

RULING

Date of last Order: 29/07/2021

Date of Ruling: 26/08/2021

F. K. MANYANDA, J.

This is a ruling in respect of an application for setting aside a dismissal order of an appeal which was filed by the Applicant Edward Samson. The said appeal was dismissed for want of prosecution by Honourable Madeha, J. on 26/10/2019.

The application is made by way of a chamber Summons under Order XXXIX Rule 19 of the Civil Procedure Code, [Cap. 33 R. E 2019] and is supported with an affidavit giving the grounds thereof.

The Respondent have neither filed any counter affidavit nor appeared in Court. A **process server** affidavit of service sworn on 16/03/2021 shows that the Respondents evaded service. It reads as follows:-

"I did not effect the said summons to Aloyce Kamuli the Respondent, because I did not get any cooperation."

Due to this default of appearance by the Respondent this Court decided to hear the applicant in exclusion of the Respondent. The Applicant who was heard by audio telephone through his **Telephone number 0758772403** been a lay person, had no much to tell the Court than to urge it re-admit the appeal to hearing basing on reasons advanced in the affidavit.

I have gone through the said affidavit, the same shows the reasons for his failure to appear in Court on 28/11/2019 is that he did not hear his appeal been called. When he visited the registry, was told to wait until he

gets informed by telephone. He did not name the said Court clerk who later on informed him that his appeal was dismissed for want of prosecution.

The Honourable Judge dismissal order reads:-

"As from the Court record, this appeal case was filed on 06/05/2019 until on 26/11/2019 where the appellant and the respondent in this case do not come (sic) to Court due to that reason of not arriving (sic) at the scheduled date without giving necessary (sic) reasons, it is showing that they have no intention of proceedings with the case. In the upshot I hereby dismiss this appeal....."

In the affidavit the Applicant averred in paragraph 3, 4, 5 and 6 that the Applicant was dully attending in Court. That he attended before Hon. Mdemu J. on 20/06/2019, then he got transferred.

Then, he kept on waiting for the appeal to be re-assigned in the meantime appearance was been made before a Deputy Registrar where he was attending. That confusion happened when the appeal was re-assigned to Honourable Madeha, J where he failed to attend.

I have navigated through the record and asked myself between the Applicant and the Judge who is to be believed. Moreover, my perusal of the record reveals that as a fact the Applicant never appeared before the Honourable Judge Madeha. He contends that only appeared before the Deputy Registrar after shifting of Honourable Mdemu, J. to another working station. The Applicant contends further that he was communicating with a Court Clerk whom he didn't name. He did not get any affidavit from the alleged Court Clerk to support him either.

It is trite law that an affiant in affidavit who names another person from whom he got information is required to get an affidavit from that other person in order to support him.

This position of the law was meticulously stated in the cases of **Benedict Kimwaga vs Principal Secretary Ministry of Health**, Civil Application No. 31 of 2000 and **NBC Ltd vs Superdoll Trailer Manufacturing Company Ltd**, Civil Application No. 13 of 2002 (both unlimited where the Court of Appeal of Tanzania stated as follows: -

"an affidavit which mentions another person is hearsay unless that other person swears as well."

The decision in those cases followed the authority in the earlier case of **Kinghoma Ali Malima vs Abas Yusuf Mwingamno**, Civil Application No. 05 of 1987 where the applicant delayed to file written submissions on reasons that there was no cashier at the registry for receiving filing fees, but there was no supporting affidavit from the cashier, the Court of Appeal insisted that.

"The Applicants affidavit in respect of absence of a cashier was hearsay unless the same gave an affidavit to support the Applicant."

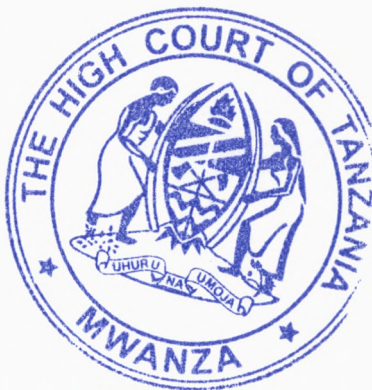
In the instant matter the Applicant has no supporting affidavit from a Court Clerk whom he allenges was communicating with on dates for hearing of the appeal and met him in the Court premises. His evidence is hearsay which this Court cannot act on it.

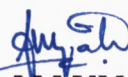
It is on these findings that I am at par with the Honourable Madam Justice Judge Madeha that the Applicant abandoned his appeal at the time, but now after an afterthought he got awake and wants this Court to re-admit the appeal. He has not given strong reasons to convince this Court exercise its discretion powers to restore the appeal to hearing.

I am of increasingly of this view because even after the appeal been dismissed, the Applicant did not act promptly. The appeal was dismissed on 28/11/2019 and this application was filled on 24/03/2020 which was four (4) months. There are no explanations for such a delay in making the application for restoration of the appeal; cases must have an end.

It is on the reasons stated above that I find the Applicant has failed to establish good cause for this Court to restore to hearing his appeal which was dismissed for want of prosecution.

Consequently, I do hereby dismiss this application for want of merit.
No order as to costs. It is so ordered.




F. K. MANYANDA
JUDGE
26/08/2021