

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)
AT KIGOMA
LAND DIVISION
(APPELLATE JURISDICTION)
MISC. LAND APPLICATION NO. 41 OF 2021

(Arising from Land Case No. 8 of 2021 of the High Court of Kigoma)

JUMANNE S/O CHAKUPEWA MCHONDO..... APPLICANT

VERSUS

BAHEBE S/O RUTUBISHA.....1ST RESPONDENT

**SENGEREMA S/O DAUDI (the administrator of
the estate of the late DENDE S/O LUTAMLA).....2ND RESPONDENT**

MPETA VILLAGE COUNCIL.....3RD RESPONDENT

UVINZA DISTRICT COUNCIL.....4TH RESPONDENT

HON. ATTORNEY GENERAL5TH RESPONDENT

R U L I N G

20th & 20th October, 2021

A. MATUMA, J.

This is an application for the restoration of the suit which was dismissed for want of prosecution. The Respondents did not object this application but the 1st Respondent through Advocate Silvester Damas Sogomba pressed for costs. I agree with both parties that this application deserves to be granted. The applicant's affidavit and supporting affidavits from his advocate and the 2nd Respondent have raised sufficient and reasonable cause for the absence of the Applicant in the main suit on the day was

fixed for 1st pre-trial conference. He was sick but made all efforts to procure his advocate through phone call but in vain.

Even though, he resorted into seeking help from the 2nd defendant to walk into his advocate's office and inform him about his sickness.

It is on record that truly the 2nd respondent went to the office of the Plaintiff's advocate only that his identity as the 2nd defendant was misconstrued by the advocate who was present in the office (Joyce Godfrey) thinking he was the plaintiff. Therefore, the Applicant made all efforts to make sure that his presence is well entered through his advocate. In fact, Joyce Godfrey learned advocate entered appearance in his behalf only that he thought the 2nd Defendant was the very plaintiff merely because it is him who went into her office.

I therefore grant this application and order that Land Case No. 8 of 2021 of the High Court at Kigoma is hereby restored and be determined on merit. About costs, on the ground that the applicant has good cause for this application, it will be unfair to condemn him costs even if the Respondents have entered costs to defend against this application.

Even though the dismissal order was made by the court, and thus inconveniences if any to the respondents was not caused by the Applicant.

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The Respondents also did not challenge the dismissal order meaning that they benefited from it. They were aware that one of the remedy for a dismissed suit for want of prosecution is an application for its restoration, and if sufficient grounds shall be advanced then the suit shall be restored. Therefore, this was a foreseeable consequence to both parties. In that respect, this application is granted without costs.

The main suit be tabled to the trial Judge for necessary orders.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Matuma", is written over a horizontal line.

A. Matuma

Judge

20/10/2021

Court: Ruling delivered in the presence of Mr. Method Kabuguzi learned Advocate, Advocate Damas Sogomba for 1st defendant, 2nd defendant in person and in the presence of Allan Shija learned State Attorney for 3rd and 4th Respondent.

Sgd: A. Matuma

Judge

20/10/2021