

**IN THE HIGH COURT OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**MICS. LAND APPLICATION NO. 78 OF 2021**

*(Arising from Misc. Application No. 62/2021)*

**BEBI SWALEHE.....APPLICANT**

versus

**IDDY RASHID.....RESPONDENT**

**RULING**

**14<sup>th</sup> Sept, & 18<sup>th</sup> October, 2021**

**RUMANYIKA, J:.**

With respect to Misc. Land Application No. 62 of 2021, pursuant to order of 26/07/2021 dismissed by this court for nonappearance of Bebi Swalehe (the applicant), the instant application for restoration is supported by affidavit of Hidaya Haruna whose contents the leaned counsel for the applicant adopted during audio teleconference hearing on 14/09/2021. Iddy Rashid (the respondent) had service of Mr. Remigius Mainde learned

counsel. I heard the learned attorneys through mobile numbers 0766 308 358 and 0764 052 619 respectively.

Ms. Hidayah Haruna learned counsel submitted that at the time the application was called out for hearing she was outside vomiting as expecting mother therefore missed the bench clerk's call, she called back but the line was busy hence the instant application much as there were only two of them but also Ms. Fatma her office mate at Mwanza was away equally occupied that the alleged nonappearance of the applicant's counsel wasn't her fault. That is all.

In reply Mr. Remigius Mainde learned counsel submitted that the explanation and reasons for nonappearance of the applicant's counsel were not sufficient for restoration of the matter (case of **Gogo Publishers and General Enterprises v. Lukumani Maloo**, Labour Revision No. 169 of 2020 Hc at Dar es Salaam (unreported) because only TAWLA Mwanza branch had the instructions not the individual counsel and there was a number of advocates around much as the court commenced business at 9.00 am and the applicant came back and lodged the instant application say 20 days after the dismissal order. That is all.

The central issue is whether the applicant has assigned sufficient grounds.

At least with greatest respect Mr. Remigius Mainde learned counsel did not sufficiently show that as Ms. Hidaya Haruna learned counsel had missed the bench clerk's call when the matter was called out in the fateful morning the former called back she but found the line busy just as the records will clearly show that the applicant's counsel found her way back, as, apparently still militant she lodged the instant application hardly two weeks later ie on 10/08/2021. I think it is dictates of prudence that unexplained nonappearance in court by the litigant exhibited lack of seriousness/militancy just as whenever the case was dismissed for nonappearance one promptly lodging application for restoration of the matter presupposed a degree of militancy and commitment to seeing the case getting to end. I entertain no doubts that only two week time under legal aid one coming back to court it demonstrated that the applicant had not actually slept over her rights she must have the rights.

Moreover, both the balance of convenience and common sense they required that unlike refusal of the application, granting her would bring no harm to the parties under the circumstances.

The application is granted. Each party shall bear their costs. It is so ordered.

Right of appeal explained.

**S.M. RUMANYIKA**  
**JUDGE**  
**18/10/2021**

The ruling delivered under my hand and seal of the court in chambers this 18/10/2021 only in the presence of Ms. Hidaya Haruna learned counsel online.



**S.M. RUMANYIKA**  
**JUDGE**  
**18/10/2021**