

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

MISC. LAND APPLICATION NO. 50 OF 2021

(From the High Court of Tanzania at Mbeya in Land Appeal No. 45 of 2019. Originating from the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 52 of 2017)

OLIVER MWALYEGO (Administratrix of the
Estate of the Late **ANGELINA STEMULE MWALYEGO**).....**APPLICANT**

VERSUS

**THE REGISTERED TRUSTEES OF
KANISA LA PENTEKOSTE TANZANIA**.....**RESPONDENT**

RULING

Date of Last Order: 12/08/2021
Date of Ruling : 22/10/2021

MONGELLA, J.

The applicant filed this application under Order XXXIX Rule 19 of the Civil Procedure Code Cap 33 R.E. 2019 seeking for restoration of Land Appeal No. 45 of 2019. The appeal was dismissed by this Court on 26th June 2021 for want of prosecution following non-appearance of the appellant and her advocate on the date set for hearing. The application is supported by the affidavits of the applicant and her advocate, Ms. Anna Samwel.



In her affidavit, the applicant claims to have been in the court precincts on the date of hearing, but could not hear the matter being called by the court clerk. She claims to have waited for the matter to be called, but was later informed by the clerk that it was dismissed.

Her advocate, Ms. Samwel, also in her affidavit, claimed to have been in court on the said date, but arrived late, that is, at 09:19am due to unforeseen circumstances. She said that later she attended a matter scheduled before another judge of this court, Mambi, J.

The same reasons were argued in the written submission filed by Ms. Samwel. She further claimed that what happened was a human error and that the appellant has not lost interest in pursuing the appeal as appearance was entered by them in previous sessions. Referring to the case of **Mwanza Director M/S New Refrigeration Co. Ltd vs. Mwanza Regional Manager of TANESCO Ltd. & Another** [2006] TLR 329; and that of **The Registered Trustees of Archdiocese of Dar es Salaam vs. The Chairman Bunju Village Government & Others**, Civil Case No. 147 of 2006 (unreported), she argued that a suit can be restored upon sufficient cause being advanced, but there is no yard stick for measuring what sufficient cause amounts to.

Arguing on the reasons for non-appearance advanced in both affidavits, Ms. Samwel was of the view that what happened was a human error and it amounts to sufficient reason. She urged the court to be bound by a decision of this Court in the case of **Clement George Mwakibinga vs.**



CRDB Branch Manager & Another, Civil Appeal No. 17 of 2019
(unreported).

In his reply, Mr. Sambwee Shitambala, learned advocate for the respondent, supported the dismissal of the appellant's appeal. He contended that the appellant did not enter appearance in court on the date fixed for hearing and assigned no reason for her absence. He challenged the reason advanced by the appellant to the effect that the non-appearance was a human error. He contended that he was present in the advocates' waiting room exactly at 09:00 am and the appellant's advocate was not there. He added that his client was also in the client's waiting room and when the case was called by the court clerk his client entered the court room. His client informed him that he had not seen the appellant when the case was called. He was thus of the view that the appellant lied before the court claiming that she was in the court house but did not hear the case being called. He prayed for the case to be dismissed with costs.

I have considered the supporting affidavits and counter affidavit filed by the parties in this application. I have also considered the arguments by both counsels. First of all I must say that I concur with both counsels that for a matter to be re-admitted after being dismissed for want of prosecution, sufficient cause that prevented the appellant from appearing on the date set for hearing has to be advanced.

I as well agree with Ms. Samwel that there is no hard and fast rule as to what amounts to sufficient cause. In the premises, each case has to be

considered in accordance with its own peculiar circumstances. In doing so the court invokes its wisdom considering the circumstances of the case and whether the reasons advanced have been substantiated. See: **Jehangir Aziz Abdulrasul v. Balozi Ibrahim Abubakar & Bibi Sophia Ibrahim**, Civil Application No. 79 of 2016 (CAT, unreported); and **Regional Manager TANROADS Kagera v. Ruaha Concrete Co. Ltd.**, Civil Application No. 96 of 2007 (CAT, unreported) whereby an inference can be drawn.

In the matter at hand, the appellant claims to have been in court waiting room, but did not hear the case being called. The record shows that the respondent was present, thus I agree with Mr. Shitambala's contention that the case was called by the clerk and his client, the respondent, who was in the court waiting room heard and attended the hearing. It is therefore not true that the case was not called as claimed by the applicant. In addition, it is a practice of this Court that all persons entering the court, including litigants, have to sign the visitor's register at the court's entrance. I thus expected the appellant to have annexed a copy of the visitor's register to prove her claims that she was already in the court house by 09:00am on the date the matter came for hearing. Failure to attach a copy of the visitor's register renders her claims wanting in proof.

The appellant's advocate, Ms. Samwel also claimed to have entered the court house a bit late, that is, at 09:19am due to unforeseen circumstances. In her submission she argued that what happened was human error thus amounting to sufficient reason. With all due respect, I do not consider her arguments as sufficient reasons. First of all she claimed that she arrived late in court due to unforeseen circumstances, but she

did not explain what were the said "unforeseen circumstances" for the court to scrutinize and ascertain on its sufficiency. Second, the claim that what happened was a human error thus should be considered as sufficient reason is baseless. She knew she was late, but never bothered to at least communicate with the court clerk to inform him of her lateness as a matter of courtesy to the court.

Ms. Samwel further claimed to have attended another case before another judge of this court on the same date which was under a special session. I however, hesitate to heed to this reason on two grounds. First, she did not state at what time she attended the said session and never provided any cause list to substantiate her claims. Second, this contradicts what she claimed earlier that she arrived late at the court house. It is therefore not clear as to what exactly precluded her from attending the hearing of the appeal between arriving late and attending a special session before another judge.

Generally, I find no sufficient reason advanced by the appellant or her advocate, Ms. Anna Samwel to move this Court to restore the dismissed appeal. The application is therefore dismissed for lack of merit, with costs.

Dated at Mbeya on this 22nd day of October 2021.




L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 22nd day of October 2021 in the presence of both parties.


L. M. MONGELLA
JUDGE