

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION NO. 45 OF 2020

(Arising from Land Case Application No. 24 of 2020, Land Case Application No. 82 of 2016, which emanated from Land Appeal No. 50 of 2013 that arose from Land Application No. 57 of 2010 of the District Land and Housing Tribunal for Kigoma)

NELSON KUBILAAPPLICANT

VERSUS

EGIDIUS WANDA KASHUMBA.....RESPONDENT

RULING

Date of Submission: 9/11/2021

Date of Delivery: 9/11/2021

AMOUR S. KHAMIS, J.

Nelson Kubila was the applicant in Misc. Land Case Application No. 24 of 2020 which was dismissed by this Court on 24/11/2020 in terms of Order IX Rule 8 of the Civil Procedure Code, Cap. 33, R.E. 2019.

He brought this application for an Order to set aside the dismissal order of Misc. Land Application No. 24 of 2020 and restoration of the said application.

The application was made by way of Chamber Summons under Order IX Rule 9 (1) of the Civil Procedure Code, Cap. 33, R.E. 2019 and supported by an affidavit sworn by Nelson Kubila himself.

In Paragraph 5 of the affidavit, Nelson Kubila stated that on 24/11/2019, a date that Misc. Land Application No. 24/2020 was dismissed, he was attending a burial ceremony of his late sister, Esther Ramadhan Ngalalizwa who died on 21/11/2020.

He deposed that his failure to appear in Court on the set date was not occasioned by negligence or deliberate but associated with death and burial of a sister.

Egidius Wanda Kashumba, the respondent herein, filed a Counter Affidavit deposed by his advocate, Method Raymond Gabriel Kabuguzi who alleged that there was no cogent evidence to prove the alleged death of the applicant's sister.

Mr. Kabuguzi averred that Nelson Kubila's failure to appear in Court on date of the dismissal was due to the applicant's and his advocate's laxity and or negligence which could not be legally condonable.

Despite of filing a counter affidavit, neither Egidius Wanda Kashumba nor his advocate, Method Raymond Kabuguzi, showed up in Court throughout pendency of these proceedings.

When the application was set for hearing before me on 9/11/2021, the applicant moved the Court to proceed exparte on account of continued absence of the respondent, which prayer was readily granted by the Court.

Submitting in support of the application, Nelson Kubila adopted contents of the affidavit in support of the application and humbly prayed for grant of the orders sought in the Chamber Summons.

The issue is whether the applicant showed sufficient cause for non appearance on the date that Misc. Land Case Application No. 24 of 2020 was dismissed.

Order IX Rule 9 (1) of the **CIVIL PROCEDURE CODE, CAP. 33 R.E. 2019** provides that a party whose suit is dismissed, may apply to set aside the dismissal order, if he satisfies the Court that there was a sufficient cause for his non appearance when the suit was called on for hearing.

In resolving the crux of the matter, I have examined the Chamber Summons, the affidavit in support of the application, the counter affidavit and documents attached to the affidavit of Nelson Kubila dated 22/12/2020.

Annexure "P 2" to the affidavit of Nelson Kubila is a death certification issued by Vitoliary Health Centre, P.O. Box 42, Kasulu, Kigoma.

The certificate show that Ester Ramadhani Ngalalizwa, aged 50 years, a female, died on 21/11/2020 at 11.52 p.m.

The certificate signed by one, Dr. Daniel John Masanja show that the deceased was admitted at the health centre on 20/11/2020 and registered through no. VHC. 00. 14. 51.

The respondent generally challenged this certificate and alleged that there was no proof for the applicant's attendance at the burial.

Having examined the death certificate, despite of being a photocopy, I have no reason to doubt its authenticity.

Further, I see no reason for the applicant to present a certificate of an unrelated person, as suggested by Mr. Kabuguzi in his counter affidavit.

In practice, death certificates are only issued to close relatives of the deceased which cannot be an exception to the applicant's deceased sister.

For these reasons, I am satisfied that the applicant was bereaved and naturally attended burial of his late sister on a date that Misc. Land Application No. 24/2020 was dismissed in this Court.

Consequently, the application is granted. The dismissal order is set aside and Misc. Land Application No. 24/2020 is hereby restored.

I make no order for costs. It is so ordered.



AMOUR S. KHAMIS

JUDGE

9/11/2021

ORDER:

Ruling delivered in Chambers in presence of the applicant in person and absence of the respondent. Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

9/11/2021