

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOB A DISTRICT REGISTRY
AT BUKOBA

MISC. LAND CASE REVISION NO. 4 OF 2021

(Originating from Land Revision No. 4 of 2019 High Court of Tanzania at Bukoba)

LAWRENCE WILBARD MTEMBEI..... APPLICANT

VERSUS

WILBROAD KALIST BIL AURI 1ST RESPONDENT

ELIEZA ELISA..... 2ND RESPONDENT

RULING

18/10/2021

NGIGWANA, J.

This is an application for restoration of Land Revision No. 4 of 2019 which was dismissed on 22/06/2021 for want of prosecution. It is brought under certificate of urgency, and by way of chamber summons made under Order IX rule 3 and section 95 of the Civil Procedure code Cap. 33 R:E 2019. The same is supported by an affidavit sworn by the applicant's advocate, Mr. Sileo Muzullah. The major prayers are:

- (i) That the honorable court be pleased to set aside its dismissal order in Land Revision No. 4 of 2019.
- (ii) Costs of the application be provided for.

When the matter was called on for hearing, the applicant had the legal services of Mr. Sileo Mazullah while the respondents appeared in person

and unrepresented. Advocate Sileo for the applicant adopted his affidavit supporting the application and submitted that, on 22/06/2021 the matter was fixed for determination of the preliminary objection, but the same was never argued nor withdrawn, instead, the Land Revision No. 4 of 2021 was dismissed.

The learned counsel referred the court to the case of **Nyarugusu Mining Co. Ltd versus Labour Commissioner and Another, Labour Revision No. 76 of 2020** where it was held that;

"It is the practice of the court founded upon prudence that once a preliminary objection is raised, it will have to be determined first ahead of going into the merits of any matter".

He further argued that, he did not enter appearance on 22/06/2021 because the matter was cause listed and was to come for the hearing on 20/7/2021.

In reaction the 1st respondent opposed the application but gave no reasons for his opposition. The 2nd respondent on his side submitted that, the applicant ought to have lodged an appeal as per section 47 of the Land Disputes Courts Act Cap. 216 R.E 2019, hence urged the court to strike out the application for being incompetent.

Mr. Mazullah in his brief rejoinder stated that the application is competent because the matter was dismissed for want of prosecution/non-appearance of the applicant.

Now, the main point for consideration and determination is whether sufficient reasons warranting the grant of this application have been demonstrated.

Order IX rule 3 of the Civil Procedure Code, Cap 33 R: E 2019

"Where a suit is dismissed under rule 2, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply to set aside the dismissal order, and if he satisfies the court that there was good cause for his non-appearance, the court shall set aside the dismissal order and shall appoint a day for proceeding with the suit"

Section 95 of the same Code provides;

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court"

The applicant opted to file the present application. It is a settled law that, seeking to set aside a dismissed order, a party should furnish the court with sufficient reasons for the non-appearance when the case was called on for hearing. The applicant's conduct before the alleged no-appearance should be taken into consideration. See. **Shoked and Another versus Goldschmidt and Others (1998) 1 ALL E R 372.**

In the application at hand, the applicant had been entering appearance though his advocate Mr. Sileo Mazullah. He has explained the reason as to why he had not entered appearance on 22/06/2021. I have also considered the fact that the matter was scheduled for hearing of the preliminary objection raised by the 2nd respondent Eliza Elisa that **"the affidavit is**

bad in law for containing extraneous matters”, and that on that date fixed for hearing, the same was neither heard nor withdrawn, but the main case was dismissed for the non-appearance/want of prosecution.

Without further ado, it is my considered view that sufficient reasons warranting the grant of this application have been demonstrated by the applicant. In the premises, this application is meritorious and is granted accordingly: - Land Revision No. 4 of 2019 is hereby marked restored. It is so ordered.



E.L. NGIGWANA

JUDGE

18/10/2021

Ruling delivered this 18th day of October, 2021 in the presence of Mr. Sileo Mazullah, learned advocate for the Applicant, both respondents in person, Mr. E. M. Kamaleki, Judges' Law Assistant and Mr. G. Rugaika, B/C.



E.L. NGIGWANA

JUDGE

18/10/2021