

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPLICATION NO.61 OF 20201

(Originating from the High Court of Dodoma. Misc. Land Application No.69 of 2019, From District Land and Housing Tribunal for Kondoa, Kondoa, Original land Case No.3 of 2019)

MABWAYI MPAIRA.....APPLICANT

VERSUS

KEYA CHANDA.....RESPONDENT

RULING

Date of last order: 06.11.2021

Date of Ruling: 06.12.2021

A.J. Mambi, J.

This Ruling emanates from an application filed by the applicant PRAYING FOR restoration order. in his application supported by an affidavit. The applicant filed an application (Misc. Land Application No. 61 of 2021) for an application to restore Misc. Land Application No.69 of 2019 which was dismissed for want of prosecution.

During hearing, the respondent did not appear. The records reveals that the respondent has never appeared and he was

served with summons for several times but he has been refusing to sign the summons in front of the Mtaa leaders.

The applicant counsel prayed to proceed *ex parte* and matter proceeded *ex parte* since there was no reasons for non-appearance for the respondent. The applicant counsel briefly submitted that the applicant is seeking for an order of restoration of the application which was dismissed. He argued that the applicant has stated his reasons for application under the affidavit (paragraphs 3, 4 & 5). He also argued that the applicant was sick when the matter called for hearing before it was dismissed for want of prosecution. The Learned Counsel further submitted that the applicant intended to file an extension of time to this court to challenge the decision of the DLHT. He thus averred that since the applicant was supplied with the document late that is why he filed an application for extension time before it which was dismissed for want of prosecution.

I have considerably perused the application supported by an affidavit. I have also keenly considered the submissions made by the applicant to find out whether this application has merit or not. The main issue to be determined is whether the applicant has advanced sufficient reasons for this court to consider his application for restoration of the Misc. Land Application No.69 of 2019;

In other words, the question to be determined is whether the applicant has properly moved this court in his application and

whether there are any good causes for his application. It is trite law that any party seeks for restoration of an appeal or application he is required to advance sufficient reasons in his affidavit before the court can consider and allow such application. This is the position of the law and case studies. The test for determining an application is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted.

This means that in determining an application of this type, the court has to determine if the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. This means that the court need to consider an issue as to whether the applicant in his affidavit have disclosed good cause or sufficient reasons for delay.

Looking at the application before this court, the applicant in his affidavit has clearly indicated that he had sufficient reasons for this application. It is clear from the affidavit and other records that the applicant has clearly stated the sufficient reasons. His reason is based on the fact that he failed to appear before the court since he was admitted at the hospital attending medical treatment. My perusal from the records especially affidavit and submission have revealed that the applicant has established good cause as indicated under para 4, 5, and 6 of his affidavit. In my view, these were good

causes and sufficient reasons for his delay. My perusal on the applicant's documents including his affidavit (para 4, 5, and 6) in line with his submission has found that the applicant has indicated reasonable or sufficient cause to enable this court to restore his application.

It should also be noted that granting or refusing application for restoration is the discretion of court.

I am of the considered view that this application has merit and this court finds proper the applicant be allowed to restore his application that was earlier dismissed by this court. The applicant shall file his application within 21 days from the date of this ruling.



A.J. MAMBI

JUDGE

06.12. 2021

Ruling delivered in Chambers this 6th day of December 2021 in presence of the applicant advocate.



A.J. MAMBI

JUDGE

06.12. 2021

Right of appeal explained

A handwritten signature in blue ink, consisting of a large loop followed by several smaller, more complex strokes.

A.J. MAMBI

JUDGE

06.12. 2021