

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY
AT MWANZA

MISC. LAND APPLICATION NO. 14 OF 2022

(Arising from Land Case No. 20 of 2021 in the High Court of Mwanza)

KAROLI WILIAM MATHAYO APPLICANT

VERSUS

THE BOARD OF TRUSTEES OF

CHAMA CHA MAPINDUZI 1ST RESPONDENT

ADAM JUMA 2ND RESPONDENT

MWANZACITY COUNCIL..... 3RD RESPONDENT

ATTORNEY GENERAL..... 4TH RESPONDENT

RULING

22nd July & 10th August, 2022

Kahyoza, J.:

The applicant was a Plaintiff in Land Case No. 20 of 2021 and respondents were defendant. The suit was dismissed for want of prosecution for absence of the applicant and his advocate.

The Court adjourned the hearing of the suit at the applicant's request and fixed for hearing on 15/02/2022. It was fixed a hearing date in the presence of the applicant's advocate Ms. Rose Ndege. The court adjourned the hearing of the plaintiff's case, which had commenced

reluctantly from 17/11/2021 to 15/02/2022. It warned the applicant's advocate for causing unnecessary adjournment. It stated;

"Never the less, I shall reluctantly, though grant adjournment. The Plaintiff counsel is warned. Hearing on 15/02/2022 at 09:00 AM in court. It is so ordered".

Unfortunately, on the date the Court fixed to proceed hearing of the plaintiff's case, on 15/02/2022, the plaintiff and his advocate did not enter appearance. The court dismissed the suit for want of prosecution. Aggrieved, the applicant applied to this Court for an order to set aside its dismissal order and restore the suit.

The grounds advanced to support the application were that; **one**, the applicant's advocate was sick; and **two**, the plaintiff was away on a business trip. The third and fourth respondents resisted the application by filing joint counter affidavit. The issue is whether the applicant has adduced good reasons(s) for non -appearance.

The applicant's advocate's deponed and argued that on the material date she was unable to attend as she was suffering from dizziness and headaches due to heavy bleeding, so she went to hospital for treatment. She attached a letter addressed to whom it may concern and a medical

chit showing that the learned advocate attended and was treated at Salaaman Health Centre.

It was further deponent and argued that the applicant could not appear as he had travelled to Dar es Salaam on a business trip. He annexed a copy of the air ticket.

The applicant's advocate prayed the dismissal order to be set aside arguing that, sickness is a good ground for non-appearance. To support her contention, she cited the cases of **F9 Flint Graphs Limited V. Godfrey Michael** Civil appeal No. 48 of 2020 (HC. Mwanza Sub-Registry) (unreported) , and **Mathias Marco V. Simon Bujashi** Land Appeal No. 61 of 2020 (HC. Shinyanga Sub-Registry).

The 3rd and 4th respondents opposed the application. They deponed vide Ms. Sabina Yongo, the State Attorney that the court was entitled to dismiss the suit for want of hearing. They added that the applicant did not adduce good reasons for non-appearance. She deponed and argued strongly that the applicant's advocate did not fell sick.

The applicant's advocate submitted in her rejoinder, that, she was sick and the documents attached when genuine. She asked the court if it so wishes to consult Salaaman health centre.

I am alive of the fact that sickness of a party is ground for non-appearance, as well, that sickness of an advocate is not an automatic ground for non-appearance or adjournment. Thus, if this court was informed that the applicant's advocate was absent due to sickness, it would not have adjournment the hearing of the suit, unless, the applicant proved that his advocate fell sick shortly before hearing date, so that he could not engage another advocate. This is the current position of the law. See rule 1(3) of Order XII of the **Civil Procedure Code**, [Cap. 33 R.E. 2019] (the CPC). It states-

(3) In every case under sub-rule (1), the court shall fix a day for the further hearing of the suit and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that-

(a) N/A

(b) N/A

(C) N/A

(d) where the illness of an advocate or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant adjournment unless it is satisfied that the party applying for adjournment could not have engaged another advocate in time;

It was argued that the applicant was on a business trip so he could not attend and his advocate is alleged fell sick. I will first consider if the applicant was prevented by good cause to appear. A business trip is not a good cause for his absence. The applicant had testified and therefore, the case was fixed for him to call witnesses. He would ensured his witness is available and travel. Not only that but also, the applicant's advocate was warned for causing unnecessary adjournment on 17/11/2021. She was required to take the warning seriously and ensure her client was present. The applicant deponed that he travelled on a business emergency, however, he did not explain the emergence. He left it to the court to guess or predict. I do not find that to be a good reason. The applicant attached the air ticket, which is not readable and not original. It is a copy which is not readable. It proved nothing.

Even if the applicant proved that he travelled to Dar es Salaam that would not have proved that he had an emergency business trip. I find the applicant was absent without good reason.

Next, I will consider whether, the applicant's advocate had good reason(s) for her absent. It is on record that the applicant's advocate was warned not cause unnecessary adjournment. She, nevertheless, got

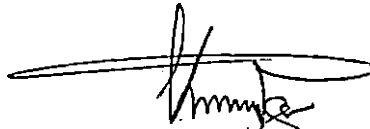
absent contending that she was sick. She annexed a letter and a medical chit. I was not convinced that the applicant's advocate was absent because she was sick. It is a Court of Appeal's stance, that courts should not question genuineness of a medical chit. That notwithstanding, medical chit should be genuine. In the present case, the applicant's advocate alleged that she fell sick, suffering from dizziness caused by heavy bleeding. She was given eight (8) hours bed rest. She annexed a letter and a medical chit, she did not attach a receipt to prove that she paid for services rendered. The EFD receipt would have proved the date she attended the hospital for treatment. Not only that but also, the applicant's advocate attached a letter from Salaaman Health Centre that attended her. Why on earth would a doctor write letter after attending a patient. The applicant's advocate ought to explain why her doctor issued her an administrative letter to explain that she was attended at their centre. The letter raises questions than answers and proves that the applicant created the letter and medical chit after the case was dismissed to prove that she was sick, attended at Salaaman Health Center and advised to rest.

I am therefore of the firm view, that the applicant's advocate was not sick. She manufactured evidence to prove that she was sick and treated. I am therefore, not convinced that the applicant's advocate was sick and her non-appearance was due to sickness.

In the end, I find that the applicant and his advocate had no good cause for non-appearance. Consequently, I dismiss application for want of merit with costs.

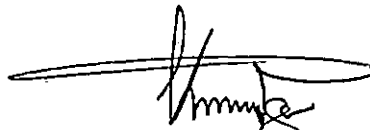
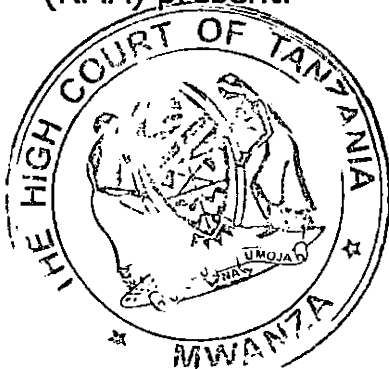
It is ordered accordingly.

Date at **Mwanza** this 10th day of **August**, 2022.



J.R. Kahyoza
Judge
10/08/2022

Court: Ruling delivered in the absence of the parties' representative, whom the bench clerk had notified to appear for ruling. B/C Jackline (RMA) present.



J.R. Kahyoza
Judge
10/08/2022