

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISCELLANEOUS LAND APPLICATION NO. 6 OF 2022

(Originating from the High Court of Dodoma in Misc. Land application No. 119 of 2019 and Misc. Land Application No. 96 of 2016 of the Singida District Land and Housing Tribunal)

FRANK PETRO..... APPLICANT

VERSUS

JACKSON SALEMA..... RESPONDENT

RULING

23/6/2022 & 26/07/2022

KAGOMBA, J.

This application is filed by FRANK PETRO, the applicant praying for the Court to set aside dismissal order made by this Court in Misc. Land Application No. 119 of 2019. He also applies for costs and any other relief this Court may deem fit and just to grant.

The application is supported by affidavit sworn by the applicant whereas the respondent, JACKSON SALEMA has opposed the application by filing his Counter affidavit.

The applicant's affidavit, among other things, states the reasons for the applicant's failure to attend the Court leading to dismissal of his application. it is averred in the affidavit that the applicant filed Misc. Land Application No. 119 of 2019 in this Court and the same was assigned to Honourable Judge M. M. Siyani J, (as then was). That, following the

appointment of Honourable M. M. Siyani J, to be Jaji Kiongozi, the said application was adjourned several times before its re-assignment to another Judge (Hon. Dr. A. J. Mambi, J). It is the applicant's further averment that he was not aware of the re-assignment to another judge therefore his application was dismissed for non-appearance.

In addition to that, the applicant averred that while the application was pending in Court, he had been attending medical check-up at Hydom Hospital following his motor accident. He attached medical reports to that effect. He therefore stated that his failure to attend the Court on the hearing date was not due to negligence, but for the reasons stated above. Hence, he prayed for his application to be granted arguing that there are overwhelming chances for him to succeed.

The respondent's counter affidavit vehemently opposed the application. It was averred by the respondent that the application was dismissed upon applicant's negligence to appear to the Court and that the alleged medical check- up was not colliding with the Court's schedule as alleged by the applicant.

It was further averred that the applicant will suffer no loss if the application is not granted since the land which is the root cause of their dispute doesn't belong to the applicant but the applicant is trying to make unnecessary chaos.

When the matter was scheduled for hearing, both parties appeared on their own without legal representation and made their submission in line with their affidavits.

The applicant in his submission, prayed the Court to allow his application for restoration by considering his chamber application and a supporting affidavit. He added that the reason which caused his non-appearance in Court was the motor accident he got in May 2020, which made him spend lot of time in hospital.

The respondent opposed the application as per his filed counter affidavit. He conceded that the applicant got an accident. He however argued that the applicant had a duty to notify the Court about his failure to attend the Court, as he did on 5/8/2020 when he sent his relative.

In addition, the respondent contended that the dates which the applicant was required to attend to the Court were not colliding with his dates for medical check-up. He therefore prayed the Court to dismiss the application.

With the above rival submission by the parties as well the applicant's affidavit and the respondent's counter affidavit, the issue for determination by this Court is whether the applicant has shown sufficient cause for the application to be granted.

It is trite law that whoever wants the Court to set aside its dismissal order has to adduce sufficient cause for his non-appearance when the matter was scheduled for hearing.

In this application, among the reasons adduced by the applicant is that when the application was scheduled for hearing the trial Judge (M. M. Siyani, J) got appointment hence his application was adjourned several times and later re-assigned to another Judge without having such information. In this ground, the applicant pleads that there occurred a date mixed up which caused dismissal of the application for non-appearance. By itself, this reason cannot be said to be sufficient since the application was never abandoned by the Court as the same was being attended, a fact confirmed by the applicant himself.

The applicant has also pleaded that when the application was pending in Court, he had been attending medical check- up following a motor accident. I have perused closely the medical chits attached to the affidavit but found that the same bears the dates of 2020 and not 2021 when the application was dismissed for non-appearance. Further, a letter dated 22/11/2021 written by Haydom Lutheran Hospital which was submitted by the applicant clearly stated that the applicant had been attending the hospital several times since June to October 2020. This

means, the applicant has not justified his absence in Court on 9/9/2021 when the application was dismissed for want of prosecution.

Therefore, the reasons pleaded by the applicant for his non-appearance are not sufficient to grant restoration of the application.

However, upon further perusal of the Court's record, I have noticed changes of dates which in one way or another occasioned non-appearance of the applicant. It is revealed in the proceedings that on 20/5/2021 when the matter came for hearing both parties were present and it was adjourned to 21/7/2021. The record shows further that instead of the matter being called up on 21/7/2021 as per previous order, the Court sat on 22/7/202 where both parties were absent and therefore the Court went ahead to schedule another hearing date on 1/9/2021 with the order of issuance of notice to the parties. Unfortunately, there is no proof of service of the notice in Court's file despite the fact that the respondent appeared. Also, on 1/9/2021 the Court scheduled another hearing date on 9/9/2021 with another order for notification to the applicant, yet there is no proof of notice being served on the applicant. Therefrom the Court went on to dismiss the application for want of prosecution because of applicant's non-appearance.

Under the circumstances narrated above, it is evident that the applicant was not notified of the date of hearing, having in mind that on 21/7/2021 there was a change of a date for the sitting of the Court to 22/7/2021. Lack of service of notice to the applicant denied him his right to be heard. It is trite law that in any proceeding where a party has been denied a right to be heard, such proceeding shall be rendered a nullity. See the case of **Mary Mchome Mbwambo and Another V. Mbeya Cement Company Limited**, Court of Appeal of Tanzania at Dar es salaam, Civil Appeal No. 161 of 2019.

That being the case, for the interest of justice the applicant's application to set aside the dismissal order has to be granted despite his failure to adduce sufficient cause as required by the law.

In the upshot the application is granted. The dismissal order of this Court dated 9/9/2021 is set aside and Misc. Land Application No. 119 of 2019 is hereby restored. Costs to follow event.

It is so ordered.

Dated at **Dodoma** this **26th** day of **July, 2022**.




ABDI S. KAGOMBA
JUDGE