

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 23 OF 2022

*(Arising out of the Misc. Civil Application No. 139 of 2020 Originating from
Application No. 2 of 2016)*

**THE REGISTERED TRUSTEES OF ROMAN CATHOLIC
CHURCH DIOCESE OF SHINYANGA.....APPLICANT**

VERSUS

1. ALLY RASHID NKANGO

(DONEE OF MWAJUMA MAYUNGA MBUGA

2. MKASIWA AUCTION MART AND


COURT BROKER LIMITED

...RESPONDENTS

RULING

When this application came for hearing I noted that the 2nd Respondent Mkasiwa Auction Mart and Court Broker is absent. I required the learned advocate for the Applicant M/S Getruda Faustine to state whether they effected service to the 2nd respondent.

I also noted that this is an application for stay of execution pending the determination of Application for extension of time within which to appeal against the Judgment of the trial tribunal in land Application no. 2 of 2016. I required the learned advocate for the Applicant to state which application is pending and in which court upon which this application is brought.



1

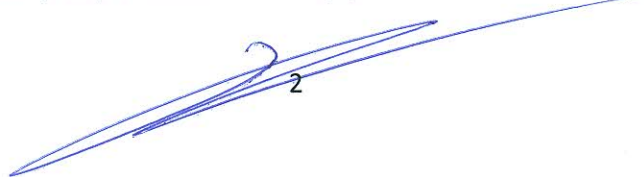
M/S Getruda Faustine learned advocate submitted that they have no evidence of service to the 2nd Respondent however the 1st Respondent was phoned and went to pick the summons from their office.

In regard to the second issue, the learned advocate stated that although they did not mention the pending application for extension of time, there is Misc. Civil Application no. 24 of 2022 pending before Justice Kulita.

The 1st Respondent on his party submitted that he does not know whether the 2nd Respondent was served or not. He also denied any pending application for extension of time as contended by the learned advocate for the Applicant.

Having heard the learned advocate for the Applicant and the 1st respondent who is present for the herein above raised issues, I find that the applicant in her Chamber Summons and Affidavit did not name the alleged pending application for extension of time and the court in which the same is pending. The learned advocate for the Applicant however named it in the cause of this hearing to be Misc. Civil Application no. 24 of 2022 in this Court. The 1st Respondent disputed that fact which necessitated me to call for the relevant Misc. Civil Application no. 24/2022 to satisfy myself of the pendency of the alleged application for extension of time.

Having perused such application, I found out that it is true the Applicant has a pending application for extension of time against the same Respondents herein but the same was filed after the current application for stay of excusion was filed. In other words that is to say by the time this application for stay was filed there was no pending application for extension of time as purported. This Application was filed on 04/07/2022



2

while the said Application for extension of time was filed on 08/07/2022. Therefore this application contains false deposed facts that it was filed for determination pending another matter which in fact was not in the Court Register.

Under the circumstances, this application was brought just to frustrate the decree without any reasonable cause and the filing of Misc. Civil Application no. 24 of 2022 do not cure this application because the same did not lay out the foundation out of which this application was to stand. This application was incompetent from the date it was filed and deserved to be struck out. I will however not do so for the purposes of resolving the second issue.

In the second issue, it is true that the applicant has not effected service to the 2nd respondent. The learned advocate has conceded as such and that is why the 2nd respondent has not filed the counter affidavit.

It is now a trite law that failure to effect service to the opponent party is equal to failure to prosecute the matter before the Court.

The Applicant has thus failed to prosecute this application and the same deserves to be dismissed.

With these observations, this application is hereby dismissed for want of prosecution.



It is so ordered.

A. MATUMA
JUDGE
02/09/2022