

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA  
MISC. LAND APPLICATION NO. 35 OF 2021**

**SAMWEL KABOHOLA.....APPLICANT  
VERSUS**

**GILBERT S. MALODA.....RESPONDENT  
(Arising from dismissal order of the High Court of Tanzania, Dodoma)**

**Dated 4<sup>th</sup> of May, 2021**

**In**

**Land Appeal No. 45 of 2020**

.....

**RULING**

**24<sup>th</sup> August & 09<sup>th</sup> September, 2022**

**MDEMU, J:.**

This is an application for setting aside the dismissal order of this Court and restore Land Appeal No. 45 of 2020 which was dismissed for want of prosecution on 04<sup>th</sup> May, 2021. The application was preferred under provisions of Order IX, Rule 3 of the Civil Procedure Code, Cap. 33 and supported by the affidavit of one Samwel Kabohola, the Applicant herein sworn on 12<sup>th</sup> May, 2021.

The application was heard by way of written submissions. The Applicant was represented by Mr. Mselingwa, learned Advocate whereas the Respondent was represented by Mr. Kesanta, learned Advocate as well.

In support of the application, Mr. Mselingwa in his written submissions filed on 03<sup>rd</sup> August, 2022, submitted that, the Applicant was the Appellant in Land Appeal No. 45 of 2020 before this Court whereas on 04<sup>th</sup> May, 2021, the case was decided in favor of the Respondent. He said that, the Applicant was late on the date scheduled for hearing on 04<sup>th</sup> May, 2021. He stated to have been informed by the Registry Officer that, the case was adjourned until 05<sup>th</sup> May, 2021. Come the 05<sup>th</sup> May, 2021, he found the case being dismissed for want of prosecution on 04<sup>th</sup> May, 2021. He thus prayed this Court to set aside dismissal order and restore Land Appeal No. 45 of 2020 since nonappearance was not deliberate by the Applicant.

In reply, Mr. Kesanta argued firstly, stating that, the application is time barred because under Item 4 of Part III of the Schedules to the Law of Limitation Act Cap. 89, application for setting aside dismissal of the suit have to be filed within thirty (30) days. In his view, as the appeal subject to this application was dismissed on 4<sup>th</sup> May, 2021, application filed on 7<sup>th</sup> June 2022 was out of time. It was his submissions that, this being a point of law,

can be raised at any time thus prayed the application be dismissed with costs for being time barred.

Without prejudice to time limitation, it was his submissions that, for this application to be granted, the Applicant must have sufficient reasons to justify his failure to prosecute Miscellaneous Land Appeal No. 45 of 2022. He cited the case of **Nasibu Sungura vs. Peter Machumu [1998] T.L.R. 496** to bolster his argument.

He argued that, the Applicant has failed to adduce reasonable grounds for his failure to prosecute his appeal. Firstly, the Applicant allegation that the Registry Officer informed him the appeal to be scheduled for hearing on 5<sup>th</sup> May, 2021 is baseless for want of verification in the affidavit hence, a new fact. Furthermore, he neither mentioned the name of the alleged Registry Officer nor affidavit sworn to that effect. On this, he referred the cases of **Emmanuel Mkenga vs. Mwamvita Mwamba, Land Appeal No. 163 of 2018; Mariam Khalifan Mtoro vs. Shirika la Umeme Tanzania (TANESCO), Civil Application No. 301/18 of 2020 and Benedict Kimwanga vs. Principal Secretary, Ministry of Health, Civil Application No. 31 of 2000** (all unreported).

Secondly, the Applicant had been negligent to appear in Court prosecuting his appeal. He registered absence of the Applicant on 29<sup>th</sup> July 2020, 14<sup>th</sup> September 2020, 11<sup>th</sup> November, 2022, 12<sup>th</sup> February 2021 and 04<sup>th</sup> May 2021.

Thirdly, he said that, nonappearance of the Applicant was deliberate by himself and not misunderstanding during correspondences between him and the Registry officer. In conclusion, he prayed the application be dismissed with costs. The Applicant didn't file a rejoinder written submissions which was to be filed by 24<sup>th</sup> August 2022.

Having carefully considered submissions made by the learned Counsels in their written submissions and closely examined the affidavit and counter affidavit, the issue for determination is whether the application is meritorious.

Beginning with time limitation raised by the Respondent's Counsel, Section 3 of the Law of Limitation Act, Cap. 89 serves many purposes including setting time limitation within which to institute proceedings in Courts of law and the consequences when the proceedings are caught in

web of time limitation without leave of the Court. Part III, item 9 of the Schedule to the Law of Limitation Act provides: -

*"Application for readmission of an appeal dismissed for want of prosecution; thirty days."*

Back to the application at hand, the records speaks louder that, the suit was dismissed on 4<sup>th</sup> May, 2021, while the application to set aside such dismissal order was filed on 7<sup>th</sup> June, 2021. Simple arithmetic provides an answer of thirty three (33) days thus, making the application to set aside dismissal order being filed out of time contrary to the cited provisions of the Law of Limitation Act.

As said, the Applicant's counsel did not file his written rejoinder. He was served with reply to written submissions as per the record. Remaining mute on the raised time limitation, and it being a legal issue, he is hereby taken to concede on the raised point, much as such concession may not be the basis of this decision. The purpose of any rejoinder is to make clarification of matters raised in a reply submission.

I should also make it clear that, this being an application for restoration of an appeal dismissed for want of prosecution, the relevant provision is Part

III, Item 9 to the to the Law of Limitation Act, Cap.89 and not Item 4 of Part III observed by Mr. Kesanta in his written submissions. This latter is for readmission of suits dismissed for want of prosecution.

That said and done, I find this application to be time barred. The remedy for an application which is time barred and filed without leave of the Court to extend time, is to dismiss it, as I hereby do. This ground alone suffices to dispose the whole application. The Applicant to bear costs.

It is so ordered



**Gerson J. Mdemu**

**JUDGE**

**09/09/2022**

**DATED at DODOMA** this 09<sup>th</sup> day of September, 2022



**Gerson J. Mdemu**

**JUDGE**

**09/09/2022**