

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISC LAND APPLICATION NO. 50 OF 2022**

(Originating from Misc. Land Appeal No. 22 of 2021 of the High Court of Tanzania at Mwanza)

**GEORGINA NOAH LUKALI (Administratrix of Estates of  
NOAH LUKALI .....APPLICANT**

**VERSUS**

**MRS.SENKOLO E. SALIM .....RESPONDENT**

**RULING**

Date of Last order 22/9/2022  
Date of Ruling 27/09/2022

**R. B. MASSAM, J.**

This is a ruling in respect of the application brought under Order XXXIX Rule 19 and section 95 of the Civil Procedure Code Cap. 33 R.E 2019 and Section 51(2) of the Land Disputes Court Act Cap. 216 R.E.2019.

The applicant filed her application by presenting a chamber summons supported by affidavit sworn by Georgina Noah Lukali. In her application, the applicant's prayers before this court are:

- (1) That this honorable court be pleased to re-admit land appeal No. 22 of 2022 dismissed by the court on 31<sup>st</sup> May, 2022.
- (2) The costs to follow the event.



In brief, the facts of the case are as follows: that the applicant aggrieved with the decision of land case No. 59/2017 from Mwanza District Land and, Housing Tribunal and she appeal to this court in land appeal No. 22 of 2021 when the matter came for hearing, on 31/5/2022, the appellant was around but his advocate was not around, but on the side of respondent was not around but her advocate was around, the court ordered appellant to communicate with her advocate, but her advocate was nowhere to be seen, later on, the appellant prayed to the court to be given time to look for another advocate but she was not given and the matter was dismissed for non-appearance of the appellant. So the appellant brought this application for restoration of her case.

During the hearing of the appeal, the applicant enjoyed the services of Mr. Julius Mushobozi learned counsel while the respondent was represented by Mr. Remedius Mainde learned counsel, with the leave of the court, the application was argued orally.

Submitting in support of the application Mr. Julius Mushobozi told this court that the applicant prays for restoration of land appeal no 22/2022 which was dismissed for non-appearance of the appellant on 31/5/2022, also he prays this court to adopt the affidavit filed by Georgina Noah Lukali to



form part of his submission. He told this court that, the said appeal was before Ndyansobera, J and his duty is to show sufficient reasons as to why the applicant's application should be restored. He told this court that his good reasons are in para 7,8,9,10 of the applicant affidavit and para 4,5,6, and 7 of his affidavits and in the court proceeding of the said date. He went on and state that the said date, he planned to come, but he received a call from Court of Appeal through court clerk namely Stella Mramo that he has a summons to appear court of Appeal before Mwampashi, JR. On his way to Dar es salaam he informed his fellow advocate one Remedius Mainde the advocate for the respondent to inform the court, as it is a trite law that when an advocate is summoned to appear to the higher Court and the lower court at the same time he is supposed to appear to the higher court first, In this case he was summoned to appear to the court of Appeal and the high court so he opted to appear to the court of appeal first and inform his fellow advocate to inform the court, to him that make sufficient reasons for his case to be re-admitted, to cement his argument he brought a case **of Gehangir impercom vs. Temba Garmets** [1970] HCD 841, this case held that, the superior court take precedent of the lower court which in this case amount to set aside the said dismissal order.



Also, he submitted that in present application the appellant was around, so failure of this court not to grant her application will prejudice her rights, he also said that, when the advocate fail to appear to the court and the applicant appeared, the court required to give a party right to proceed himself/herself. In this case, he said that his client was not given that right. He support her argument with the case of **The Secretary Department of Horticulture Chandigarh & ANR vs. Raghu Raj civil appeal no 41 of 1979**, he said that in this case insisted that it is not safe to dismiss the case without giving a party right to proceed himself. Lastly, he said that he pray this court to set aside the dismissal order.

Opposing the application, the respondent Mr. Remedius Mainde submitted that he objects submission of the appellant's counsel that he had sufficient reasons because the demeanor of the appellant's advocate was not good as the court proceedings show that, many times when the matter was coming for necessary orders he never attending to the court, or sometimes he used to send his fellow to hold his brief. He added that he is objecting to this court that, appellant's advocate told him to inform the court of his absence on 31/5/2022 when the case was dismissed as the said date he saw the appellant and ask her whereabouts of her advocate, and she said that her





advocate was coming and she was not aware that her advocate travelled to Dar es salaam, and it is true that, appellant was asked by the court if she can proceed herself and she said she can't, He went on by saying that he is aware that it is trite law that in due date of hearing, when advocate has a case lower court and another higher court, is required to appear to the higher court . He said that the matter before Ndyansobera, J was fixed for hearing on 31/5/2022, and at the court of appeal the matter was fixed for hearing on 2/6/2022, so it was a different date. And incase the appellant advocate is insisting the same so he was required to attach court proceedings to prove the same, he supported his argument by referring to the case of **Maduhu Thomas Ulanga vs. National Microfinance Bank and Dolphin General business Enterprises Ltd**, Misc. land application No. 22/202, in this case, insisted that the proof on appearance in another court can be proved by support of document, in that court the counsel informed the court that he attached affidavit while he did not. Also in the case of **Nasib Sungura vs. Peter Machumu** [1998] TLR page 501, in this case, the court held that where the appeal was dismissed under sub-rule 2 of rules 11,17, or 18, the appellant can pray for re-admission, but appellant must have sufficient reasons, so in the present case, appellant counsel did not prove



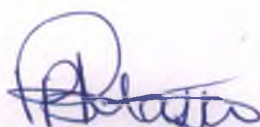
the sufficient reasons, as it was his responsibility to notify the lower court that, he was appearing to the higher court, so he concluded by saying that the said act is abuse of court proceedings.

In rejoinder, the counsel for the appellant said that there was no order of last adjournment on 30/3/2022 when the matter adjourned and fixed for hearing on 31/5/2022, and all that happened that day can be seen in the court proceedings which read that:-

*"My Lord Mr. Mushobozi informed that he was at Dar es salaam, and it is not true that appellant was asked if she can proceed herself or not"*

Also, he adopt the holding of the court in the case of **Maduhu Thomas Ulanga** which held that in order for the court to give restoration, the party must show proof of cause list or in alternative court proceedings. He said that in the present case, he attached summons and order of Mwampashi, JR on his side, that order is more than the cause list.

Mr. Remigius Mainde pray to this court to give chance as there is issue of annexure "A" which was order of Mwampashi, JR which he was not given chance to talk about it, that the court grant granted the leave, and he submitted that, he don't agree with submission of counsel for appellant that



order of Mwampashi, JR was more than court proceedings as the said did not show the court on 2<sup>nd</sup> June, 2022 so he insisted that there was a need of court proceedings to be attached.

I have considered the arguments for and against the application herein by the learned advocate for the applicant and the respondent respectively the central issue for determination is **whether the application is meritorious**, determining an application of this kind the court has to consider whether the applicant has advanced sufficient reasons to convince the court to grant the application sought, and what amount to sufficient cause depends on the circumstances of each and every case.

By looking at the proceedings Misc. land appeal No. 22 of 2021 was dismissed on 31/5/2022 for non-appearance of the appellant, it shows that the matter was called up on 31/5/2022, the applicant was present and the counsel for the respondent but the counsel for appellant was not around, appellant informed the court that she don't know whereabouts of her advocate and she prays to the court be given time to look for another advocate, by looking to the court proceedings nowhere show that, she was given that time so this court is in support of the submission of appellant's



that, appellant pray to given time to look for another advocate but she did not given.

Again when looking at paragraphs 7,8,9 and 10 of the applicant affidavit show that, advocate for the appellant got a summons to appear to the court of Appeal just around 16:09 pm under emergency call so he tried to look for her, but she was not reachable, so her advocate decided to travel to Dar es salaam, to attend the matter on 2/6/2022 before Court of Appeal, that's why her advocate failed to notify the court prior.

This court is aware that, and it is settled principle of law that in application seeking to set aside a dismissal order for non-appearance the applicant has to adduce ground for failure to enter appearance. In **Shamsudin Jiwan Mitha vs. Abdul Aziz Ali Ladak** [1960] 1 E.A 1054, it was held that:-

*"in order to succeed in an application for re-instatement of a suit or appeal, the applicant has to show that he did not appear and that he was prevented from appearing by sufficient cause".*

In the matter at hand, the appellant's counsel said that the reasons for his non-appearance on the material date is summons which he got from





court of Appeal to appear before Mwampashi, JR on 02/06/2022 and he said that, he tried to look for airplane ticket but he failed to get it, thus why he took a private motor vehicle and start a journey to Dar es salaam where he arrived on 1/6/2022 and appeared at the court of appeal on 2/6/2022 before Mwampashi, JR.

Guided by the above reasons and authorities this court does not see the reasons as to why this application should not be granted. That being said this court is full satisfied that the applicant has demonstrated good cause to have the order sought. Consequently, be dismissal order in land appeal no. 22 of 2022 dated on 31/5/2022 is hereby set aside, and the matter is restored for hearing on merit. Each party shall bear its own costs for this application. It is so ordered.

**DATED at MWANZA** this 27<sup>th</sup> day of September 2022.




  
**R.B. MASSAM**

**JUDGE**

**27/09/2022**

Ruling delivered on 27<sup>th</sup> September 2022 in presence of parties' learned counsel.

  
**R.B. MASSAM**  
**JUDGE**  
**27/09/2022**