

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. LAND APPLICATION NO. 80 OF 2022

(Arising from Misc. Land Appeal No.38 of 2022 HC of Tanzania at Bukoba)

NGEMELA LONGINO-----APPLICANT

VERSUS

REVELIANA AMANDUS.....RESPONDENT

RULING

*13/09/2022 & 29/09/2022
E. L. NGIGWANA, J.*

The applicant brought this application under Order XXXIX Rule 9 of the Civil Procedure Code (Cap. 33 R.E 2019) seeking for orders that the order dismissing Misc. Land Appeal No. 38 of 2022 for want of prosecution be set aside, and the said appeal be re-admitted for hearing inter-parties on merits. As usual, the application is supported by the affidavit sworn by the Applicant Ngemela Longino. The respondent filed a counter affidavit contesting this application.

When invited for oral submission, both parties were unrepresented. It was applicant who started to set a ball rolling and therefore prayed his affidavit to be adopted. The reasons for non-appearance to prosecute the dismissed appeal can be discerned from paragraph 2, 3, 4 and 5 of the applicant's affidavit together with the applicant's elaborations in chief. That, after being aggrieved by the decision of the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 17 of 2020 handed down on

31/03/2021; the applicant lodged his appeal to the same tribunal as required by law. The said appeal was dispatched to the High Court from Muleba and registered as Misc. Land Appeal No. 38 of 2022.

Having done so, the applicant kept on making a follow up to see if the said record was transferred to this Court where he could be availed summons but he found the transfer of the same was not yet. It was the applicant testimony and submission that he had to make a follow up to this court so as to get summons but in vain until on 11th July, 2022 when he came to realize that the said appeal was dismissed for want of prosecution on 6th day of July, 2022 without neither being notified of the transfer of the record nor summoned to appear in this court. He therefore immediately filed the current application to salvage the situation.

The Respondent has refuted the prayers for restoration of the dismissed appeal by the Applicant asserting the same to have no merit. To amplify what was stated in her counter-affidavit, the respondent submitted in reply that the applicant is the one who filed the said appeal. He wondered how comes herself had appeared four times to this court without the appearance of the applicant. He contended that he made follow up to Muleba District Land and Housing Tribunal and he was informed that the case file was already transported to the High Court, hence she appeared to this court. She was of the view that the applicant was negligent to make follow ups.

In his rejoinder, the applicant insisted that he came to know that his case was dismissed for want of prosecution on 7/7/2022 after being notified by Muleba DLHT that the record was transmitted to the High Court since April 2022.

Having heard the oral submissions of both parties and passed through the entire record of this application, the issue for determination is whether the applicant had a sufficient cause for non-appearance.

The applicant submitted that cause for non-appearance was due to failure by the DLHT to notify him the transfer of the file despite making a follow up and also failure by this court to issue a summons to enter appearance in this court.

The respondent opposed that the applicant had no sufficient cause as he was negligent in appearing in court since he is the one who filed the dismissed appeal.

In order to shut this discourse, I found it imperative to extract and quote some of the proceedings of the dismissed appeal which is Misc. Land Appeal No.38 of 2022 to see what transpired before it was dismissed along with verifying the applicant's account.

"Date: 25/4/2022

Coram: Hon. A.W. Kabuka, Ag DR

Appellant: Absent

Respondent: Absent

B/Clerk: Mwashabani

Order: Hearing on 20/6/2022

SGD

Ag. DR

25/4/2022

Date: 20/6/2022

Coram: Hon. N. N. Kilekamajenga, J.

Appellant: Absent

Respondent: Present in Person

B/C: Mwashabani

Court: The appellant is absent

Order: Hearing on 06/07/2022

SGD

N.N. Kilekamajenga

Judge

20/6/2022

Date 06/07/2022

Coram: Hon. N. N. Kilekamajenga, J.

Appellant: Absent

Respondent: Present in Person.

B/C Mwashabani

Respondent: *The appellant has not been attending to the case ever since it was filed. I pray the same be dismissed.*

Court: *The case came for the first time for mention on 25/04/2022 but the appellant did not attend. It came again on 26/06/2022 but he (appellant) did not attend and the case was scheduled for hearing. Today on 06/07/2022, the case came for hearing but the appellant did not appear. However, all these time, the respondent has been faithful in attending to it. The case deserves to be dismissed.*

Order: I hereby dismiss the appeal for want of prosecution with costs. It is so ordered.

SGD

N. N. Kilekamajenga

06/07/2022"

From the above reproduced proceedings, I observed that the first date that is to say; 25/04/2022 when the case was scheduled before the Acting Deputy Registrar necessary orders, neither party appeared but yet the Acting Deputy Registrar did not issue any order pertaining issuance of summons to parties.

The non-issuance of summons was repeated to all dates before hearing. However, on 20/06/2022 and 06/07/2022, the respondent entered appearance in person but not because she was summoned, it is because; she made her personal follow-ups in the DLHT where she was informed that the case file was already dispatched in this Court. On his side, the applicant had averred that he had made follow up in the DLHT and as well in this court but in vain, the fact which was not disputed by the respondent.

I am inclined to agree that since the appeal was not filed directly in this court but was filed in District Land and Housing Tribunal at Muleba as per the law and the same tribunal was duty bound to dispatch the appeal to the High Court, there is no way the applicant could have known that the file was in domain of the High Court already and was ready for hearing without being notified with the summons.

The argument by the respondent that the applicant was supposed to know that the case file was already dispatched to this court the way she knew it when she went to the DLHT is negated by the reality that; they did not make

follow up on the same day. When applicant went to the DLHT, he was informed that the file was not yet dispatched whereas, the day the respondent went to the DLHT, she was lucky enough to have found that the file was already dispatched. Therefore, this court was supposed to discharge a duty of issuing summons to parties. It is unfortunate that the said duty was not discharged.

Since there was failure of this court to issue summons to the applicant, I am satisfied that has managed to demonstrate sufficient cause for his non-appearance on 06/07/2022, when his appeal was dismissed.

In the upshot, I find this application to be meritorious and grant it. I hereby set aside the dismissal order on 06/07/2022 in Misc. Land Appeal No.38 of 2022 and order restoration of Misc. Land Appeal No.38 of 2022. Given the nature of the application, I give no order to costs. It is so ordered.

Dated at Bukoba this 29th day of September, 2022

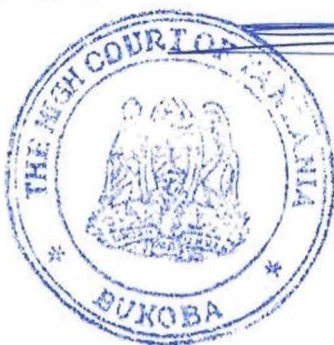


E. L. NGIGWANA

JUDGE

29/09/2022

Ruling delivered this 29th day of September, 2022 in the presence of both parties in person, Hon. E.M. Kamaleki, Judges' Law Assistant, and Ms. Mwashabani, B/C.



E. L. NGIGWANA

JUDGE

29/09/2022