

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA.

MISC. LAND APPLICATION NO. 35 OF 2022

(Arising from Land Appeal No. 59 of 2020 in the High Court Mwanza Registry)

BETWEEN

MHOJA NJILE.....APPLICANT

VERSUS

TEDDY KADALO.....1st RESPONDENT

SYLIVESTER RUBEN.....2nd RESPONDENT

JACKSON MAKWAYA.....3rd RESPONDENT

RULING

i.

Last order: 11.10.2022

Ruling date: 11.10.2022

M. MNYUKWA, J.

The applicant filed the present application before this court on 21/04/2022. After being assigned the case file on 27/4/2022, I issued initial orders for the parties to be notified and the matter was scheduled for hearing on 6/7/2022. When the matter came for hearing on 06/07/2022, the counsel for the applicant informed this court that, there



was no proof of service in respect to the 3rd respondent in the court records, which signifies that, the 3rd respondent was not served and, therefore, prayed to be given time to file proof of service to this court to show that the 3rd respondent was served.

Upon receiving this information, this court ordered the proof of service to be filed on 08/07/2022 and if the same is not found, the 3rd respondent to be served with summons and the matter was scheduled for hearing on 04/08/2022.

When the matter was coming for hearing on 04/08/2022, the counsel for the applicant, prayed again to serve the 3rd respondent and this time around the prayer was granted and the court ordered the 3rd respondent to file reply to the affidavit on or before 23/08/2022 and the matter was scheduled for hearing on 11/10/2022.

The applicant did not file the proof of service of the 3rd respondent until when the matter was coming for hearing today and the 3rd respondent informed this court that, he was informed by the street chairman on 08/10/2022 that, there was a summons against him and he is supposed to appear before the court today on 11/10/2022.

When I asked the learned counsel for the applicant as to why he delayed to effect service, he replied that the 3rd respondent was not



available and they have tried to find him through the leadership of the local government who signified that, the 3rd respondent was not available. The counsel for the applicant stated that, as the 3rd respondent is now appearing before the court, he prays this court to give him time to file the reply to the affidavit and the matter be scheduled for hearing on the next hearing date.

On his part, the counsel for the 1st respondent prayed for the matter to be struck out because the applicant did not exhibit that he had served the 3rd respondent and there is no proof of the same.

From what transpired in court, it is true that, the averment by the applicant's counsel that the 3rd respondent could not to be traced was not backed up with any evidence before this court, despite the fact that, the applicant was given more than one chance to serve the 3rd respondent so as he can appear and the matter to proceed with hearing. In the circumstances, it is as good as the applicant has failed to prosecute his case for failure to effect services to the 3rd respondent in an appropriate time and on the different chances given by the court to do so.

The application would thus deserve to be dismissed for want of prosecution but in my discretion, I struck it out to give the applicant an opportunity to refile the application and bears some consequences as to



the costs of filling the case so as the applicant's counsel to be serious with the orders of the court for the interest of both parties to the case and for the court which adjourned the matter for failure to effect service to the 3rd respondent.

In the circumstance, this application is hereby struck out and the applicant is at liberty to file the same within 14 days if he so wishes.

It is so ordered.




M. MNYUKWA
JUDGE
11/10/2022

Court: Ruling delivered on 11th day of October, 2022 in presence of the applicant's counsel, the 1st respondent's counsel, the 3rd respondent and in absence of the 2nd respondent.


M. MNYUKWA
JUDGE
11/10/2022