

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. LAND CASE APPLICATION NO. 85 OF 2021

(Arising from Misc. Land Appeal No. 06 of 2020 of the High Court of Tanzania at Bukoba, Land Appeal No. 82 of 2018 of Muleba District Land and Housing Tribunal and Civil case No. 15 of 2018 of Karambi Ward Tribunal)

ELIAS ANDREA..... APPLICANT

VERSUS

LADSLAUS INYASI..... RESPONDENT

RULING.

24/01/2022 & 04/02/2022

NGIGWANA, J.

The Applicant Elias Andrea filed the present application for restoration of Misc. Land Appeal No. 06 of 2020 which was dismissed by this court (Mwenda, J) on 19/07/2021 for want of prosecution. It is made under Order XXXIX rule 19 of the Civil Procedure Code cap. 33 R: E 2019, accompanied by an affidavit deposed by the applicant. The prayers in the chamber summons are as follows:-

- (i) That this honorable court be pleased to restore Misc. land Appeal No. 06 of 2020 which was dismissed on 19/07/2021 for want of prosecution.
- (ii) That costs of the application be provided for.
- (iii) Any other relief(s) as the Honorable Court may deem fit and just to grant.

The back ground leading to this application can be stated briefly that, the applicant was the Appellant in Misc. Land appeal No. 06 of 2020 arising from the DLHT for Muleba at Muleba in Land Appeal No. 82 of 2018, Original Civil case No. 15 of 20 of Karambi Ward Tribunal.

On 19th day of July 2021, when the appeal was called on for hearing, the applicant made no appearance. The appeal was therefore dismissed for want of prosecution. It is for the said dismissal order, the applicant on 16th day of August 2021 filed this application on the aforementioned prayers. The respondent filed the counter affidavit opposing the application.

At the hearing, both parties appeared in person and unrepresented. The applicant prayed to this court to adopt his affidavit to form part of his submission. The applicant submitted that; he resides at Muleba Rural hence sometimes used to come to court in late hours. That, on 26/5/2021 he entered appearance before the Deputy Registrar of the High Court in which the hearing was adjourned until 12/07/2021.

He further submitted that, it was very unfortunate that, the way the date was pronounced led him to confuse the dates because he thought that the hearing was adjourned until 22/07/2021, and following his illiteracy, he approached the High court watchman at the High Court building gate and mentioned to him the date, then the watchman wrote to him the said date in a piece of paper that "***tarehe ya kurudi ni 22/07/2021***".

It is his further submission that, he entered appearance on 22/07/2021, and learnt that appeal No.06/07/2021 was already dismissed for want of prosecution, hence this application.

He added that, it is in the interest of justice that this application be granted to allow appeal No. 06 of 2020 to be heard and determined on merit.

Reacting, the respondent submitted that, the applicant failed to enter appearance on the scheduled date for no apparent reasons. He added that it is not true that the applicant on 26/05/2021 confused the dates because the court room was calm and silent, and no evidence that the applicant had audio problems. He ended urging the court to dismiss this application with costs for want of merit.

Having heard the rival submissions of both parties, the issue for determination is whether this application is meritorious or otherwise.

It is the applicant's prayer that this court re-admits the dismissed appeal. There is no doubt that the business of the court is to be respected by complying with court orders, and for that reason, it is due diligence for one to find means to notify the court that he will not enter appearance as scheduled by a court order.

Furthermore, it is the parties' duty to be very attentive and kin wherever attending a court session so as to grasp properly the date announced for next appearance. If the dates are not grasped properly, that would automatically cause non-appearance.

In the instant application, the above circumstance occurred and led to non-appearance of the Applicant on the date the matter was scheduled for hearing. The records revealed that the applicant appeared in court on 22/07/2021 instead of 12/07/2021. The records further revealed that on 12/07/2021, the hearing was adjourned to a further date to wit; 15/07/2021, whereas, it was not heard because the applicant entered no appearance. It was further adjourned to the next hearing date to wit; 19/07/2021 with an order that the **applicant (appellant) should be notified of the hearing date.**

I have made a thorough perusal of the available court record to see whether the applicant was notified of the hearing date to wit; 19/07/2021 as per court order, but found nothing in the court record indicating that the applicant was duly notified of the said hearing date. The applicant had the right to be duly informed of the hearing date. **See Finca Tanzania versus Leonard Andrew Korogo**, Civil Appeal No.16 of 2020 HC-Musoma (Unreported)

In the case of **Meis Industries Ltd and Others versus Twiga Bancorp**, Misc. Commercial Cause No.243 of 2015 HCCD at DSM (Unreported), the court held that;

"It is trite that restoration of the case is entirely in the discretion of the court to grant or refuse it. This discretion however, has to be exercised judiciously and the overriding consideration is that there must be sufficient cause for so doing. In order for the sufficient cause to be determined, there are factors to be taken into account including whether or not there is

valid explanation for the non-appearance of the applicant during the scheduled hearing date, lack of diligence on the part of the applicant”

From the above, taking into account that the nature of the dismissed case being a land case which was before this court on appeal, it is my considered opinion that, it is desirable to see justice to have been done and a conflict resolved once and for all rather than existence of endless litigations.

In the event therefore, and from all that has been stated herein above, the dismissal order in Misc. Land appeal No. 06 of 2020 dated 19/07/2021 is set aside. Appeal No. 06 of 2020 is hereby restored as prayed.

It is so ordered. Each party shall bear its own costs.



E.L. NGIGWANA

JUDGE

04/02/2022

Ruling delivered this 4th day of February 2022 in the presence of both parties in person, Mr. E M. Kamaleki, Judges Law Assistant and Mr. Gosbert Rugaika B/C.



E.L. NGIGWANA

JUDGE

04/02/2022