

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
LAND DIVISION  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 424 OF 2021**

*(Arising from the Order of Kagomba J, in Misc. Land Application No.104 of 2021 dismissed for want of prosecution dated 29/6/2021)*

**SAID MGAYACHUMA LUBIKY ..... APPLICANT**

**VERSUS**

**JOSEPH MLANJI .....RESPONDENT**

**RULING**

*Hearing date on: 22/3/2022*

*Ruling date on: 31/3/2022*

**NGWEMBE, J:**

The applicant herein is struggling to restore his application No. 104 of 2021 which was dismissed by A. S. Kagomba J, on 29/6/2021 for want of prosecution. Through his advocate Mr. Barnaba Luguwa moved this court under Order IX Rule 9 (1) section 3A (1) & (2) and section 95 of the Civil Procedure Code Cap 33 R.E. 2019 to set aside the dismissal Order and restore the application for extension of time to file an appeal against the judgement and decree passed by the District Land and Housing Tribunal for Kilombero and Malinyi delivered on 2<sup>nd</sup> December 2020.



The application is supported by an affidavit sworn by the learned advocate Barnaba Lugawa, who has explained in his seven paragraphs, how he was stuck on which date to appear before whose judge. Paragraphs 4, 5 & 6 discloses the predicaments he was encountered, at last he found his application being dismissed for want of prosecution before another judge whom he was not aware off.

In turn the Respondent filed a detailed counter affidavit, whereby he challenged that the learned advocate was aware of the date of hearing therefore, the dismissal for want of prosecution was within the purview of the law.

When this application came for hearing, both parties appeared in persona without their advocates. Unfortunate both relied solely on their affidavits and had nothing to argue in support or against the application.

The law is clear that, once the suit/application is fixed for hearing, both parties must appear in court. Failure to appear during trial, if is for the applicant/plaintiff the action will be dismissed for want of prosecution, but if the respondent/defendant fails to appear on the hearing date, the action may proceed ex parte, save only if the respondent/defendant is a Government, its procedure is different.

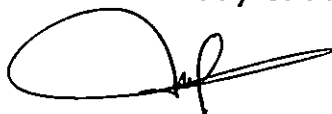
However, the interest of court is to dispose off the suit/application on merits. Thus, the Legislature, provided a room to set aside a dismissal suit or application for want of prosecution.



In respect to this applicant, I am satisfied that the applicant has demonstrated good cause in his affidavit, which hindered him to appear on the hearing date. Accordingly, and without laboring much on this matter, I am convinced, the absence of the applicant was not intentional, hence the application is granted. I proceed to restore the application No. 104 of 2021 to proceed with hearing for extension of time.

**Order accordingly.**

**Ruling** delivered in chambers this 31<sup>st</sup> day of March, 2022.

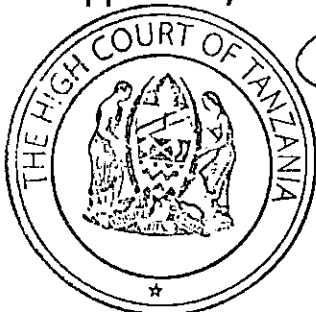


**P.J. NGWEMBE**

**JUDGE**

**31/03/2022**

**Court:** Ruling delivered in chambers on this 31<sup>st</sup> day of March, 2022 in the presence of Applicants, in the presence of both parties.



**P.J. NGWEMBE**

**JUDGE**

**31/3/2022**