

“ORIGINAL”

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

MISC. LAND APPLICATION NO. 13 OF 2020
(Arising out of Misc. Land Application No. 23 of 2019, High Court Tanga)

HAKIMU SAIDI..... 1ST APPLICANT
MSELEM JIBRAN..... 2ND APPLICANT

VERSUS

MOHAMED A CHABANGA.....RESPONDENT

RULING

Date of Ruling- 31/03/2022

Mansoor, J.

The applicant filed an application under Order IX Rule 9 of the Civil Procedure Code, Cap 33 R: E 2002. They pray for the orders of setting aside the dismissal order of 20th February 2020 made by the High Court of Tanzania, Tanga Registry in Misc. Land Application No. 23 of 2019. The reasons for failure to appear in Court on the date the application was set for hearing was shown in the affidavit of the Applicant's Counsel



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Mr Switbert Rwegasira filed in court along with the application. The reasons for not attending the court session are shown in paragraph 4 and 5 of the applicant affidavits. The Counsel says he travelled to Tanga from Korogwe to attend to the case but once he reached the High Court, he found there was Court of Appeal session going on. He says there was a case going on at the Court of Appeal session of which he had interests, and he entered the Court Room, and he was prohibited to get out of the court room. He says, he missed the attendance of the High Court session, and when he came out of the Court of Appeal session, he was told that the application was already dismissed. He admits that he never informed the High Court of his appearance before the Court of Appeal.

The application was vehemently resisted by the respondent who appears in person. Together with filing the counter affidavit to oppose the application, he had a stern stand that the nonappearance of the applicants and their counsels was out of negligence and since he is an old man coming from Handeni which is far from Tanga he has been inconvenienced,

and he incurs a lot of costs coming all the way to tanga from Handeni.

The Advocate admitted his mistakes, and in fact his reckless act and lack of diligence. He admits not to inform the High Court of his appearance before the Court of Appeal, whether for interests or learning purposes. It is unthinkable that an Advocate will chose to go for a learning session and completely ignores to attend to the case that brought him all the way from Korogwe. In any case, there is no proof from the Counsel mere assertion that he was present in court on 20th February 2020, but he attended the Court of Appeal session and neglected to attend to his client's case for which he received instructions. The question to be determined is whether the Advocate mistake is sufficient ground for granting the prayer for setting aside the dismissal order.

An Advocate is the Agent of his clients, and the law of agency provides that the principal should be bound by the acts of his

agent. Yet in administering justice, why should the litigant suffer due to the mistakes and errors of his advocate?”

The dismissal of the case in this matter has been occasioned by the advocate's negligence, recklessness, and lack of diligence. There is not forgivable blunder of failure to appear in court, and the remedy is obviously dismissal. This is not an error of law or well as an error of fact for which the Advocate could have been forgiven, and since he failed to appear and thus failing to prosecute the case on behalf of his client, this blunder is no forgivable. Negligent by itself can be sufficient reason to set aside the dismissal order.

In Kenya, in the case of *A.G v Theuri 1985* the court affirmed that extension of time would only be allowed on the basis of an advocate's mistake if the same was genuine.

In this case, even if I believe that the Advocate's mistake was genuine and not negligent, however I'm still concerned that even if I grant an order of setting aside the dismissal order so that the Revision is heard on merits, this will not help the

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Applicants as the Applicants are seeking the Revisional of Execution proceedings and Revision of the Land Appeal No. 190 of 2012 through revision. The Applicants wants these two proceedings to be revised in one Application for Revision, not only that the application is omnibus and hence not maintainable, but also the time to apply for Revision of Judgement and Proceedings of Land Appeal No. 190 of 2012 had long passed, and one cannot seek for Revision of an appealable order and cannot seek for Revision outside the prescribed time. The Applicants should seek for time to be able to apply to appeal against the Judgement of Land Appeal No. 190 of 2012 and they may also apply for stay of execution before the executing court pending determination of the intended appeal. The advocate's negligence in this matter has caused obstruction and delay of the course of justice.

I agree that that a litigant should not suffer for their advocate's mistakes and upon the principles of natural justice that parties are to be given a chance to be heard on merits as far as possible. However, the orders to set aside the dismissal

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orders passed not only that it will not benefit the applicants herein for the reasons stated herein above, but also, they will cause unnecessary sufferance and inconveniences to the respondent and will prejudice the respondent in great depth.

For the above reasons this Application not allowed, and dismissed, with costs to the respondent.

DATED AND DELIVERED at TANGA this 31ST day of MARCH 2022





L. MANSOOR

JUDGE

31ST MARCH 2022

Date: 31/03/2022

Coram: B. R. Nyaki, DR

Applicants: Absent

Respondent: Present in person

C/C: Abubakari

Court:

Ruling delivered in the presence of the Respondent in person but in absence of the Applicants.

Sgd: B. R. Nyaki, DR

31/03/2022

Court: Right of appeal to Court of Appeal explained fully.



A handwritten signature in black ink, appearing to read "Beda R. Nyaki".

Beda. R. Nyaki

Deputy Registrar

31/03/2022