

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB REGISTRY OF MANYARA**

**AT BABATI**

**MISCELLANEOUS LAND APPLICATION NO. 17 OF 2023**

*(Arising from Land Revision No. 1 of 2022 of the High Court of Tanzania Manyara Sub-Registry at Babati, originating from Application No. 12 of 2021 of the District Land and Housing Tribunal for Manyara at Babati)*

**KONSTANTINE ADOLFU.....APPLICANT**

**VERSUS**

**MARTIN ADOLFU.....1<sup>ST</sup> RESPONDENT**

**SIXFRID ROGATI.....2<sup>ND</sup> RESPONDENT**

**JIBRIL ADOLFU.....3<sup>RD</sup> RESPONDENT**

**RULING**

*24<sup>th</sup> April & 8<sup>th</sup> May, 2023*

***Kahyoza, J.:***

This is ruling in respect of application seeking this Court to set aside its dismissal order. The applicant instituted an application for revision of an order of the District Land and Housing Tribunal (the DLHT). On the date the application was set for hearing, the applicant defaulted to appear. Following the applicant's non-appearance, the Court dismissed the applicant. Aggrieved, the applicant instituted the instant application.

The applicant deponed in the affidavit supporting the application that, he fell sick, he was not able to attend. He annexed a letter from the doctor who attended him to show that he attended the hospital on the material date. During the hearing the applicant had no more to add to his affidavit.

The respondents vehemently objected to the application. They contended that the applicant did not have evidence that he was sick and that he failed to pay the advocate was paid on appearance so he had no advocate on the date the matter came for hearing. The respondents' advocate submitted that the applicant lied.

The issue is whether the applicant has disclosed sufficient reason for his non-appearance. The applicant advanced only ground for his non-appearance that is he was sick. He did not attach the a medical chit. He only attached a letter from one of the doctors at hospital where he claimed he was hospitalized. Not only that but also the applicant did not attach a medical cheat or explain how sickness prevented him from attending the court. It settled that ill health without elaboration cannot amount to good reason. See the decision in **Shubilu Shefanya V. Omary Ally** [1992] TLR

245. In that case an application was dismissed because ill health without elaboration cannot amount to good reason.

Indeed, sickness is a ground for non-appearance. If a party fell sick and that party can establish how sickness prevented him from attending the court, that amounts to a sufficient reason. Much as I was not convinced that the applicant fell sick, since he had a duty to prove the allegation that he was sick on the balance of probability, I find that he has discharged his duty. Consequently, I find the applicant has established that his non-appearance was for a good cause.

In the end, I allow the application, set aside the dismissal order and restore the application, which dismissed. Costs shall be in due course.

**Dated at Babati** this 8<sup>th</sup> day of May, 2023.



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**John R. Kahyoza,**  
**Judge**