

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISCELLANEOUS LAND APPLICATION NO. 11 OF 2022

(Arising from Miscellaneous Land Application No. 04 of 2022 in the High Court of Tanzania at Sumbawanga, Original Miscellaneous Land Application No. 34 of 2016 in the District Land and Housing Tribunal for Rukwa)

VITUS VICENT MWANISAWA 1ST APPELLANT
CHARLES VICENT MWANISAWA 2ND APPELLANT

VERSUS

NEHEMIA LUWELARESPONDENT

RULING

MWENEMPAZI J.

The applicants have filed this application seeking orders of the Court restoring Miscellaneous Land Application No. 4 of 2022 which was dismissed for want of appearance and also for any other relief this Court may deem it fit to grant.

The application is taken at the instance of James Lubusi, Advocate for the applicant and it is supported by the joint affidavit sworn by the applicants.

In the affidavit the deponents have stated that they filed application No. 4 of 2022 in the High Court of Tanzania at Sumbawanga Registry seeking an order to extend time to apply for an order setting aside ex parte judgment. However, it was dismissed for want of appearance on 12/05/2022 by Hon. Nkwabi, Judge. They sent a representative to convey the message that their bother is sick. The applicants allege that if the said application No. 4 of 2022 is not restored they will suffer loss.

The annexed medical sheet shows that one Charles Vicent Mwanisawa is sick.

At the hearing Mr. James Lubusi, Learned Advocate appeared for the applicants and the Respondent was unrepresented.

Mr. James Lubusi, Learned Advocate, first sought leave and prayed that the affidavit be adopted to form part of the submission. He reiterated the reason for non – appearance is the sickness of the applicant. In order to emphasize the point and convince this Court to grant the application, the counsel referred to the case of **Ally Said Mzumba Vs. Mwajuma Stamili**, Misc. Civil Application No. 65 of 2021, High Court of Tanzania ta Dar es Salaam where Hon. Mango, Judge allowed an application for extension of time on the reason that delay was due to sickness, she observed that:

"Sickness is a good ground for extension of time as it has been held in a number of cases"

The counsel for applicant argued that there are a number of cases where sickness has been held to be a good reason to extend time or restore a case dismissed for want of appearance. He also argued that a right to be heard is a basic right and that is the desire of the applicants. He prayed that this Court restores Misc. Land Application No. 4 of 2022 in order to accord the applicants a right to be heard.

In reply to the submission, the respondent submitted that the application by the applicants has no merit. He prays that the application should be dismissed.

He has argued that if it was sickness, it is not true that both the 1st and 2nd applicant were sick instead, one of them would have entered appearance and leave the sick person attending treatment. Worse enough, they sent a person to report but without a medical certificate or letter from the chairman of the village. The Court was right to dismiss the application.

According to the medical certificate shown it is Charles Mwanisawa who was sick. It is a lie that the applicant was sick. The medical certificate has no stamp of the hospital. It is just a form, it lacks authenticity.

The applicants' signatures on the application are forged. They used to sign by pressing the Right Thumb Print. But this time around they signed. The respondent has submitted that the applicant feared to be apprehended. He prayed the application be dismissed.

In rejoinder Mr. James Lubusi, Learned Advocate has submitted that it is true one applicant was sick but since they are relatives, the other one had to take care of the sick one. The applicants sent a relative to give notice to the Court.

I have read the record and also heard the applicant's counsel and the respondent. The question is whether there is a good reason to grant the application. The applicants are alleging sickness is the reason.

I understand that sickness is a good reason for one to fail entering appearance as scheduled. Normally, a sick person is weak and depending on the intensity may be incapacitated to take care of himself and need assistance of other people or neighbor. The question therefore to resolve

this matter is what was the basis of dismissal of Miscellaneous Application No. 34 of 2022. For sometime we have been trying to locate the case file for Miscellaneous Land Application No. 4 of 2022. It has been found and brought to me. I have perused the case file for miscellaneous Land Application No. 4 of 2022 the applicants missed entering appearance on that single day on the 12th May, 2022. On the date they sent a relative, their young brother known by the name of OBEDI VISCENT who delivered the message to the Court that the 1st applicant is sick and the other applicant is attending to the sick person.

Since the message and or notice was on the sickness of one of the applicants, I believe the reason stated in the affidavit is genuine. Also, I take note that this is not a substantive determination of the parties' right to the subject matter of the dispute thus parties will be heard on the point at the relevant stage; in case the Miscellaneous Land Application No. 4 of 2022 will be restored. However, the applicants thirst is to be heard and I have to decide whether they will have that chance or not.

I find that in the interest of justice the application is a necessary step to the applicants so that they will be able to enjoy to the natural right they deserve.

Thus, the application is granted. Since sickness is a natural event, I order that each party will bear his costs.

It is ordered accordingly.

Dated and delivered at Sumbawanga this 01st day of June, 2023.



A handwritten signature in black ink, appearing to read "T.M. Mwenempazi".

T.M. MWENEMPAZI

JUDGE

Further orders: It is further ordered that the said Miscellaneous Land Application No. 4 of 2022 be mentioned on the 03/07/2023. Since the Respondent is absent, he be notified accordingly.



A handwritten signature in black ink, appearing to read "T.M. Mwenempazi".

T.M. MWENEMPAZI

JUDGE

01/06/2023