

**UNITED REPUBLIC OF TANZANIA**  
**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IRINGA DISTRICT REGISTRY)**

**AT IRINGA**

**MISC. LAND APPLICATION NO. 03 OF 2023**

*(Originating from Application No. 130 of 2019 in the District Land and Housing Tribunal of Iringa at Iringa and arising from extended jurisdiction Land Appeal Case No. 10 of 2022 in the Resident Magistrate Court of Iringa at Iringa)*

**PETER ANDREA SANGA** (As Administratrix

of the Estate of the Late Burton Andrea Sanga).....**APPLICANT**

VERSUS

**MARIA CLEMENCE SANGA** (As Administratrix

of the Estate of the Late Clemence Bernard Sanga).....**RESPONDENT**

**RULING**

**Date of Last Order: 22.06.2023**

**Date of Judgment: 28.07.2023**

**A.E. Mwipopo, J.**

Maria Clemence Sanga, the respondent herein, successfully sued Peter Andrea Sanga for trespassing into a suit premises land registered as Plot No. 180 Block C Kihesa, Iringa Municipality. In its judgment, the Iringa District Land and Housing Tribunal declared the suit premises to be the property of the heirs to the estate of the late Clemence Bernard Sanga, ordered the applicant to vacate the suit premises, and prohibited the

applicant from trespassing into the suit land. The applicant was aggrieved by the decision of the trial Tribunal and appealed to the High Court. The High Court transferred the appeal to be heard by the Resident Magistrate with extended jurisdiction and the matter be conducted at the Court of Resident Magistrate of Iringa. The appeal was fixed for mention and hearing before the Resident Magistrates Court several times where the applicant failed to appear even once. The respondent was appearing in court on every scheduled date. On 01.12.2022, the Resident Magistrate with extended jurisdiction dismissed the appeal with a cost for want of prosecution following the failure of the applicant to enter an appearance in Court even once. The applicant was not satisfied with the order of the Resident Magistrate with Extended Jurisdiction and filed the present application for the Court's order to set aside the dismissal order of the Resident Magistrate with Extended Jurisdiction.

The application is made by chamber summons supported by the affidavit of Edmund Mkwata, advocate for the applicant. The respondent opposed the application through an affidavit of Theresia Charles, Advocate for the respondent.

On the hearing date, both sides were represented by advocates. Advocate Edmund Mkwata appeared for the applicant, whereas Advocate Theresia Charles appeared for the respondent.

The counsel for the applicant submitted in support of the application that the applicant is seeking for re-admission of Land Appeal No. 37 of 2022, which was filed in this Court on 12/08/2022. The appeal was against the decision of the Iringa District Land and Housing Tribunal in Application No. 130 of 2019. The appeal was transferred to the Resident Magistrate with extended jurisdiction. The counsel said that the Court did not inform the applicant about the transfer, and the effort to find the case file failed. The applicant was later told that appeal had been dismissed for want of prosecution. Dismissing the case without being informed about the transfer and hearing date has prejudiced the applicant. It has denied him the right to appeal and be heard provided by the constitution. He prayed for the Court to re-admit the appeal and for the appeal to be determined on merits for the interest of justice.

In her reply, the counsel for the respondent submitted in opposition to the application that the applicant served the respondent with a summons after instituting the appeal. The summons informed them to appear in the High Court on 04/10/2022 before Hon. Utamwa, J. The respondent arrived at the High Court Registry and was told that the case was transferred to the Resident Magistrates Court to be heard by Hon. Mpangule, Resident Magistrate with Extended Jurisdiction. The counsel said they appeared before Hon. Mpangule more than four times without the applicant's

presence. The last time the respondent appeared before Hon. Mpangule was on 19/01/2023, and they prayed that the matter be dismissed for want of prosecution. The Court granted the prayer.

The counsel averred it is not true that the applicant made an effort to find out about their case. The applicant was expected to say the office where he was asking about the case, to whom he asked about it and, after not getting a proper answer, to ask by writing a letter inquiring about their case. The same could prove that the applicant was trying to trace and know about the appeal. Strangely, the applicant instituted the appeal in this Court, and for three months, he did not take any action to know about the case. The law requires the case to be re-admitted when the applicant provides sufficient reasons for failure to appear on the hearing date. This position is per Order XXXIX rule 19 of the Civil Procedure Code Act, Cap. 33 R.E. 2019. The same was stated in the case of **Mwanza Director M/s New Refrigeration Company Ltd vs. Mwanza Manager, TANESCO and Another, [2006] TLR 329** where the Court held that it has discretion power to restore the dismissed application where the applicant shows the sufficient cause. In this case, there is no adequate cause stated in the affidavit or submission made by the applicant.

In his rejoinder, the counsel for the respondent said the summons to appear in Court on 04/10/2022 was issued. But, no summons was issued to

appear before Hon. Mpangule, Resident Magistrate with Extended Jurisdiction at the Resident Magistrates Court after the appeal was transferred. The respondent did not say if a summons was issued to the parties to appear. The applicant had yet to receive a notification about the transfer and on appearing to Hon. Mpangule, Resident Magistrate with Extended Jurisdiction. This reason is sufficient for the re-admission of the dismissed appeal. The applicant and his advocate had no information about the case. It is a court procedure that parties to the case have to be notified when the case is assigned to a Judge or Magistrate.

From submissions, the issue for determination is whether or not the applicant has shown sufficient cause for the Court to re-admit the appeal.

The Court has the discretion to re-admit the case, which was dismissed for the non-appearance of the plaintiff. This is provided under Order XXXIX rule 19 of the Civil Procedure Code Act, Cap. 33 R.E. 2019, which provides that:-

*"19. Where an appeal is dismissed under sub-rule (2), of rule 11 or rule 17 or rule 18, the appellant may apply to the Court for the re-admission of the appeal, and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit."*

From the above cited section, it is a trite law that the Court may re-admit the case dismissed for non-appearance where the applicant has provided sufficient explanation for the failure to appear on the date the matter was dismissed. The test involved in determining an application for setting aside a dismissal order is whether the non-appearance by the applicant on the date of the dismissal was justified. See. **Hassan Hamis Nzomari vs. Edmund Thomas Lusebe and 3 Others**, Misc. land Application No. 351 of 2019, High Court Land Division at Dar Es Salaam, (Unreported).

In the case of **Sadru Mangaiji vs Abdul Aziz Lalani and 2 Others**, Misc. Commercial Application No. 126 of 2016 High Court Mwanza Registry at Mwanza, (Unreported), it was held that:

*"It is settled law that an applicant seeking to set aside a dismissal order of the court dismissing any suit for want of prosecution, he has to furnish the court with sufficient reasons for non-appearance when the suit was called on hearing."*

In the present matter, the applicant's ground for re-admission is failure of the court to inform him about the transfer of the appeal from the High Court to the Resident Magistrates Court to be heard by the Resident Magistrate with Extended Jurisdiction. Applicant's effort to find the case file failed. I have read paragraphs 4 and 5 of the applicant's affidavit, where he deposed that he made a follow-up to the High Court Registry and was

informed that the appeal had been moved to the lower Court and they would be informed of the Magistrate who would preside over it. The applicant and his advocate visited the Resident Magistrates Court offices to get information about the Magistrate assigned the appeal, but there was no cooperation. In his deposition the applicant has not mentioned the High Court Registry Officer who told them they would be informed of the name of the Resident Magistrate with Extended Jurisdiction presiding over the appeal. Further, he should have mentioned the specific office in the Resident Magistrates Court Offices they visited to enquire about the appeal where they were not given cooperation. The applicant's deposition in the affidavit is not sufficient to prove they tried to trace the case.

Usually, when the case is transferred to be heard by Resident Magistrate with Extended Jurisdiction, parties are notified. The respondent, on his part, appeared on each date scheduled by the Resident Magistrate with Extended Jurisdiction, which proves that she was notified. There is nothing in the record showing the applicant was notified. However, the applicant was expected to follow up with the Court to find out about his appeal rather than park it in Court. The deposition that they made a follow-up to the High Court Registry and Resident Magistrates Court Offices has no proof. It is strange that in the High Court, the applicant went to the registry office to enquire about the case. But in the Resident Magistrates Court, the

applicant went to the offices, not the registry office. The explanation by the applicant is not merited.

In **Nasibu Sungura vs Peter Machumu [1998] T.L.R. at page 501**, the Court stated that:-

*"an application to set aside the order dismissing the suit for non-appearance, the important question is not whether the case for the applicant is soundly maintainable and meritorious, but whether the reasons furnished are sufficient to justify the applicant non appearance on the date the suit was dismissed. "*

In this application, the applicant's explanation of the failure to enter appearance from 06.10.2022 to 19.01.2023, when the appeal was dismissed by the Resident Magistrate with Extended Jurisdiction, is insufficient. The application is unmerited. For this reason, the application is dismissed with costs. Order accordingly.



A handwritten signature in blue ink, appearing to read "A. E. MWIPOPO", is written over a horizontal line.

**A. E. MWIPOPO**

**JUDGE**

**28/07/2023**