

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. CIVIL APPLICATION NO. 10 OF 2023

(Arising from Land Appeal No. 23 of 2022 High Court of Tanzania Manyara Sub
Registry at Babati)

MLALE SOQWEDA.....APPLICANT

VERSUS

MARTIN GICHUAL.....RESPONDENT

RULING

16/8/2023 & 31/8/2023

BARTHY, J.

The applicant aggrieved with the decision of the District Land and Housing for Babati in Land Application No. 14 of 2020, he thought the indulgence of this court where he lodged his appeal to this court vide Land Appeal No. 23 of 2022. By consensus of both sides, the court ordered the matter be disposed of by way of written submissions.

The applicant was to file his submission in chief on or before 24/2/2023 and reply thereof by the respondent was to be filed on or before 3/3/2023. It is on record that, the applicant did not file his submission as ordered.

This court dismissed the appeal for want of prosecution as the



applicant did not comply with the order of the court to file his submission timely.

Aggrieved with that decision, the applicant preferred the instant application under Order XXXIX Rule 19 of the Civil Procedure Code [CAP 33 RE 2022], (the CPC) seeking for the following orders;

- i) That, this honourable court be pleased to re-admit the appeal No. 23 of 2023 which was dismissed for failure to file written submission on 14th day of March 2023.*
- ii) Any other remedies that this honourable court deems fit to grant.*

The application is supported by an affidavit affirmed by the applicant. On the other hand, the respondent lodged counter affidavit to contest the application.

When the application was called on for hearing Mr. Raymond Joachim learned advocate appeared for the applicant, while Mr. Julius Lukumay learned advocate appeared for the respondent. The application was disposed of orally.



In the submission in support of the application Mr. Raymond urged the court to re-admit Land Appeal No. 23 of 2023 which was dismissed after the applicant had failed to lodge written submission in support of the appeal.

It was his submission that, failure to lodge written submission was caused by financial difficulties on the applicant's side. As the applicant lodged his written submission on 2/3/2023 instead of 1/3/2023, he thus claimed that the applicant was late for a single day.

Mr. Raymond argued the court to re-admit the appeal as the applicant is prone to suffer if the decision of the trial tribunal will be left unchallenged, since it is tainted by illegality.

On reply submission Mr. Lukumay contended that, the reason advanced by the applicant's advocate is not sufficient for the court to re-admit the appeal. The fact that the applicant had engaged the advocate to represent him, it implies that he was financially able.

Mr. Lukumay maintained that, the filing fee for the submission is Tsh. 20,000/- Therefore, the applicant who was able to engage the advocate, would be able to pay Tsh. 20,000/- filing fee for his submission.



He went on stating that, the advocate for the applicant did not inform the court that he was doing the service pro-bono, then he cannot complain about financial constraint on the part of the applicant. He added that, the advocate for the applicant could have paid the for fee and later on claim back from his client.

To prop his argument, he referred the case of **Hamisi Mponda v. Niko Insurance & 2 others**, Civil Application No. 254 of 2021, Court of Appeal of Tanzania, quoting with approval the case of **Wambele Mtumwa Shahane v. Mohamed Hamisi**, Civil Reference No. 8 of 2016, Court of Appeal of Tanzania it held that, financial constraint is not sufficient reason for extension of time.

Mr. Lukumay also pointed out that, it was not true that the applicant had delayed to file his submission for more than one day. The applicant had lodged his submission on 2/3/2023 instead of 24/2/2023 which is about 8 days later. He therefore maintained his argument that the applicant has not advanced any sufficient reason for the court to re-admit the appeal.

Mr. Lukumay added that, the applicant had filed another appeal which was dismissed for being res judicata. It was said that if the applicant

was under financial constraint, he would not been able to file another appeal. He therefore urged the court to dismiss the application for lack of merits.

On rejoinder arguments, Mr. Raymond maintained his argument on financial constraint faced the applicant. On the reference made to the case of **Hamisi Mponda v. Niko Insurance & 2 others** (supra), Mr. Raymond argued that it was not relevant to this matter, as it involved the prayer for extension of time while in the instant matter, the applicant is praying for re-admission of his appeal.

He added that, it is the duty of the party himself to pay the fee and not his advocate. To conclude, he maintained his arguments and prayer made in his submission in chief.

Having heard the parties' rival submissions and going through pleadings relating to this matter, the sole issue for my determination is whether the application has merits.

According to the arguments of both sides and records available, it is not in dispute that the applicant lodged Land Appeal No. 23 of 2023 which was dismissed by this court for want of prosecution from the reason that, the applicant (appellant therein) had failed to file written submission

in time.

This court may re-admit the appeal dismissed for want of prosecution under Order XXXIX, Rule 19 of the CPC if it is satisfied that the appellant was prevented by sufficient cause from appearing when the appeal was called on for hearing. The provisions of Order XXXIX Rule 19 of the CPC provide;

*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.*
[emphasis added].

In the said provisions it covers the instances where the appellant did not enter appearance, also it covers instances where a party fails to file written submissions.

Mr. Raymond had stated that Land Appeal No. 23 of 2023 was

dismissed before the trial court for want of prosecution. After the applicant failed to file his submission according to the order of the.

Therefore, this court has to gauge on the reasons offered by the applicant if were sufficient for this court to re-admit the matter.

In the instant matter the applicant has argued that he failed to file the submission because of financial constraint. He also claimed he delayed for the single day. Going through the record, it reveals that the applicant was required to lodge written submission on or before 24/2/2023, but the actual date of filing his submission was on 2/3/2023 which was about 8 days delay.

Now the issue for consideration is whether financial constraint amounts to sufficient cause. Mr. Lukumay maintained that; financial constraint is not sufficient cause for the extension of time. To this contention he referred to the decision of **Hamisi Mponda v. Niko Insurance & 2 others** (supra). I have carefully gone through the said decision, on page 8 the Court of Appeal observed as follows;

*It follows that, generally, financial constraint is not good cause **but in exceptional circumstances,** such as, an **applicant is a widow and depends***



solely on legal aid, the court may accept it as a good cause for extension of time. [Emphasis added]

This finding can also be extended in matters involving application for re-admission of the matter, where in exceptional circumstances financial constraint may be considered by court to be to good cause. As in the case of **Costantine Victor John v. Muhimbili National Hospital**, Civil Application No. 214/18 Of 2020 (unreported) the Court of Appeal considered financial constraint as the sufficient reason; because the applicant depended on legal aid.

The issue here is whether in the circumstances of this case, lack of fund can be considered to be sufficient in re-admitting the case. I have gone through the affidavit in support of the application, on paragraph 6 the applicant deposes he failed to lodge the submission in time because of economic hardships.

There is no further explanation as to when the economic hardships begun. The record reveals further that, at the beginning of their case before the trial tribunal, the applicant had engaged an advocate to represent him.

Similarly, in Land Appeal No. 23 of 2023 the applicant had the

services of an advocate. There is no indication that the applicant was acquiring any legal aid. This implies that he was able to pay legal fees and able to meet his financial obligation relating to the case at hand.

After the court had ordered parties to file their submissions on 20/2/2023, the matter was then scheduled for judgment on 14/3/2023. If at all the applicant was facing financial constraint, he ought to have communicated to the court about his predicament before the date of delivery of judgment.

Even on the date fixed for delivering the judgment, the applicant did not inform the court that he failed to lodge the submission and sought for extension of time to file his submission. Rather, he decided to let the court proceed to dismiss the appeal for want of prosecution.

I am of the settled opinion that, the claim of financial constraint is want of proof and it was an afterthought.

I have taken into account the allegations by the learned advocate for the applicant that the decision of the trial tribunal is tainted with irregularities. However, the irregularities complained of was never mentioned in the affidavit in support of the application or in his submission before this court.

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Consequently, I find that the applicant has not advanced sufficient cause for the court to re-admit the appeal. I therefore proceed to dismiss the application. Costs to follow events.

It is so ordered.

Dated at Babati this 31st August 2023.



A handwritten signature in blue ink, appearing to read "G. N. Barthly", written over a horizontal line.

G. N. BARTHY,

JUDGE

Delivered in the absence of both parties and their advocates, but in the presence of Paulo Mungaya the relative of the respondent.