

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

**MISC. LAND APPLICATION NO. 31 OF 2023**

*(Arising from Misc. Land Application No. 36 of 2022 High Court of Tanzania at  
Musoma)*

**BETWEEN**

**GESERO CHACHA KENG'WENA ..... APPLICANT**

**VERSUS**

**SARAH CHACHA OBOGO ..... 1<sup>ST</sup> RESPONDENT**

**CHACHA OBOGO..... 2<sup>ND</sup> RESPONDENT**

**GHATI CHACHA OBOGO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

16<sup>th</sup> & 18<sup>th</sup> October, 2023

**M. L. KOMBA, J.:**

The applicant in this application at hand brought this application seeking for the following orders;

- 1. That this Honourable Court may be pleased to set aside its dismissal order in Misc. Land Application No. 36 of 2022 which was on 13 delivered March 2023.*

- 2. That this Honourable Court may be pleased to restore Misc. Land Application No. 36 of 2022 which was dismissed on 13 March 2023, so that the application can be heard on merit.*
- 3. Costs to follow the event.*
- 4. Any other relief (s) this court deem fit and just to grant.*

The application was brought by way of chamber summons premised under Section 95 of the Civil Procedure Code Cap 33 [R.E 2019], and it is supported by affidavit of the applicant **Gesero Chacha Keng'wena**.

Briefly, background of the case is as follows; that the applicant filed the application (Misc. Land Application No. 36 of 2022) seeking leave to appeal to the Court of Appeal. When the application was fixed for hearing on two different dates the applicant in that application who is also the applicant herein failed to make appearance without registering reasons to the trial Judge and the application was dismissed on 13/03/2023. The applicant again filed the present application (Misc. Land Application No. 31 of 2023) seeking the restoration of Misc. Civil Application No. 36 of 2022. Respondents failed to file counter affidavit on given time.

During the hearing of this application applicant and the third respondent appeared in person, without any representation. 1<sup>st</sup> and 2<sup>nd</sup> respondents did not attend to the court during the hearing of this case despite the fact that they were full informed of the matter. Thus, the matter was proceeded in ex-parte against the 1<sup>st</sup> and 2<sup>nd</sup> respondents. However, since the respondents did not file counter affidavit to contest the application, the 3<sup>rd</sup> respondent also waived his right to be heard on application unless on the legal points. See the case of **Rosemary Stella Chambejairo vs. David Kitundu Jairo**, Civil Reference No. 6 of 2018.

The applicant submitted that his case was dismissed without being heard, the act which he complained of. He submitted that the first time it was scheduled on 07/03/2023 the date which he was sick and was admitted in hospital. Upon discharge he made a follow up and was informed that the case was scheduled on 17/03/2023. On his appearance of 17/03/2023 he was informed that the case was dismissed on 13/03/2023 hence the application at hand.

He submitted further that he was aggrieved by the decision of the dual court (trial tribunal and the first appellate court) and wishes to appeal to the Court of Appeal but his application was dismissed by Hon. Mtulya J.

when failed to make appearance on 07/03/2023 and 13/03/2023. It was his submission that he was sick on 07/03/2023 and was admitted in one catholic dispensary; and further he was misinformed of the date by the court clerk that the case was re-scheduled on 17/03/2023 whilst was 13/03/2023. He prayed his application No. 36 of 2022 to be restored.

Having heard the submission by the applicant and read the application record, it is my task now to determine if the application before this court is meritorious.

It is registered position that he who allege must prove even if the suit proceed ex-parte. See **Standard Chartered Bank (T) Ltd vs Samwel Nyalla Nghuni**, Civil Appeal No. 45 of 2020, CAT at Mwanza.

Reading the affidavit of the applicant, he deponed that he was sick on the night of 04/03/2023 and in the following day he went to hospital for treatment and he returned home. In the following day he was not feeling good and was forced to go to hospital again where he was treated and it was the date his case was called for the first time. Paragraph 8 of affidavit was attached with treatment card from *Bikira Maria Mama wa Tumaini Healthy Center*. The card revealed that he was attended as outpatient and

he was attended on 05/03/2023. There is no record to show that he visited the said health center on 07/03/2023 neither that he was admitted.

It is trite that illness is an acceptable ground which if established, justifies the grant of application as was in **Malyuta Emmanuel vs. The Manager Buzwagi Gold Mines** Misc. Civil application No. 21 of 2020. Did the applicant fall sick on 07/03/2023 or was the illness incapacitated him to do other activities including to attend the court? The answer is no as he was not admitted and he did not attend to the hospital on 07/03/2023.

Further, it was the submission of the applicant that court clerk misinformed him of the date of hearing his application. He failed to mention the name of that officer of the court even to file affidavit to prove if at all he was attended by court clerk and was informed the date. It was said if the officer of the court attends a client and the client relied on that information there must be an affidavit to that effect. See the case of **Phares Wambura & 15 Others vs Tanzania Electric Supply Company Limited**, Civil Application No. 186 of 2016, CAT at Dar es salaam. In the case at hand, it is hard to believe the story by the applicant without any affidavit to justify his submission.

Finally, I find the applicant has failed to give a good cause for this court to restore Misc. Civil. Application No. 36 of 2022 which was dismissed on 13/03/2023 for want of appearance.

Application is hereby dismissed.

It is so ordered.



*NK*  
**M. L. KOMBA**  
**JUDGE**

**18<sup>th</sup> October, 2023**