

IN THE HIGH COURT OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

MISC. LAND APPLICATION NO. 51 OF 2023

(Arising from Land Appeal No. 4 of 2023 High Court of Tanga at Tanga)

VITUS VITA MAGINGI APPELLANT

VERSUS

KADO MNISI AND 11 OTHERS RESPONDENT

RULING

K. R. Mteule, J

16/11/2023 & 27/11/2023

This Ruling concerns an application seeking to readmit an appeal which was dismissed on default. The said Land Appeal was scheduled for mention on 18th July 2023 where the Appellant and his counsel failed to appear. Due to that non-appearance, the Court dismissed the matter. According to the affidavit of the applicant in support of the Application, the non-appearance was due to firstly, the Applicant's counsel's appearance in another case in Dodoma before Hon Mambi J and secondly, the applicant's sickness.

The Respondent disputed the reasonability of the reasons advanced by the Applicant which caused him to have failed to appear.

The matter was heard by a way of written submissions. In his submission, the Applicant reiterated what was stated in the affidavit on the sickness of the applicant and the counsel's attendance in another matter in Dodoma and added that the first date of mention was not in his knowledge since the court clerk could not inform him that the matter was transferred to a Magistrate with Extended Jurisdiction.

In reply, the respondent submitted that there is no reasonable cause from the Applicant to justify the readmission of the Appeal. According to the respondent no documentary evidence to support the Applicant counsel's attendance in the High Court of Dodoma neither is there any document to prove the sickness of the Applicant.

While preparing the ruling, I noted that this matter emanated from Hon. S. S. Kobero, Principal Magistrate with Extended Jurisdiction. Unfortunately, the application does not disclose this fact. It was filed as if it originates from the normal course of a matter filed in the High Court and determined by a high court judge. Questions arose as to what should be done regarding the following: orphanage

1. The consequences of such non-disclosure of essential information.
2. Effect of Rule 14 of the Judicature and Application of Laws
(Transfer and Management of Cases Assigned to Magistrates with

Extended Jurisdiction) Rules, 2023, Government Notice 11 of 2023 which requires applications emanating from the Magistrate with Extended Jurisdiction to be determined by the Magistrate who determined the original matter.

3. Way forward in a situation where parties have already made their submissions and the matter only pending for Ruling.

These questions were raised suo moto and parties were asked to address the court on it.

Mr. Yona Lucas Advocate appeared holding brief for Baby Solis Advocate. He addressed the Court and agreed that the application did not indeed, disclose that the matter originated from an appeal determined by a magistrate with extended jurisdiction. In his view, an application which does not contain sufficient information does not legally support what is sought therein and hence becomes incompetent. As to what should be done, he left to the court to decide.

Having considered the submission by Mr. Yona and having taken note to my observations in the matter pursuant to the requirements of Rule 14 of Government Notice 11 of 2023, this matter proceeded before a Judge due to lack of sufficient disclosure to determine before whose judicial officer should it be filed. As such I agree with Mr. Yona that failure to

disclose vital information renders the application incompetent. Basing on this, and this being a matter of law which can be dealt with at any stage of proceedings before the final decision, I find this application incompetent. The application is therefore struck out with leave to refile it with proper disclosures within 21 days from the date of this Ruling.

It is so ordered.

Dated at Dar es Salaam this 11th Day of December 2023



A handwritten signature in blue ink, appearing to be "Ks", is written above the judge's name.

KATARINA REVOCATI MTEULE

JUDGE

11 DECEMBER 2023

Court:

Ruling Delivered this 11th December 2023 in the presence of Yona Lucas Advocate Holding brief for Baby Solis Advocate for the Applicant.



A handwritten signature in blue ink, appearing to be "Ks", is written above the judge's name.

KATARINA REVOCATI MTEULE

JUDGE

11 DECEMBER 2023