

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SUB REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC LAND APPLICATION NO 26883 OF 2023

(Arising from Land appeal No 30 of 2023 before High court of Tanzania, from land application No 3/2023 at Kahama District Housing and land Tribunal)

MARIUS SAMWEL.....APPLICANT

VERSUS

REHEMA JULIUS.....RESPONDENT

RULING

21st March & 5th April, 2024

MASSAM, J.:

The applicant herein brought this application under order 1X Rule 3 of civil procedure code cap 33 R.E 2019 where this court is moved to set aside the dismissal order and re-admit land appeal No 30 of 2023 to be heard on merit. The application is supported with an affidavit of Mr. Marius Samweli and was not opposed by respondent as she was served more than two times but she refused to sign not to appear.

During the hearing of this application the applicant appeared in person unrepresented while respondent was absent, so the matter was heard ex parte and orally.

Supporting the application, the applicant submitted that he prays his case to be restored as he brought his submission on time but it was misplaced that's why his appeal was dismissed for want of prosecution for failure to file written submission as ordered by the court.

Having heard the submission of the applicant, the issue for determination is **whether the application has merit or not.**

It is a settled principle of law that in an application seeking to set aside a dismissal order for non-appearance the applicant has to adduce grounds for failure to enter appearance and the said grounds must be sufficient cause. In **Shamsudin Jiwan Mitha vs Abdulaziz Ali Ladak** (1960)1 E.A. 1054 it was held inter alia that:

"To succeed in an application for reinstatement of a suit or appeal, the applicant has to show that he did not appear and that he was prevented from appearing by sufficient cause."

It has to be noted that the good cause to warrant restoration of the case is not provided but it depends with the circumstances of each and every case as it was highlighted in the case of **Jacob Shija vs M/s Regent Food & Drinks limited and The Mwanza city council**, civil

application No 440/08 of 2017 court of Appeal at Mwanza (unreported)
among other things the court stated that;

*"what amount to good cause cannot be laid by any hard and fast rule
but are dependent upon the facts obtaining in each particular case.
That is each case will be decided on its own merits-----"*

In this present case applicant informed this court that he complied with the order of the court and file written submission on time but the said written submission was misplaced.

This court perused this file and find out that the said appeal was brought for hearing on 3/10/2023 the said date the applicant/appellant was present and he informed this court that respondent was served for several times but she refused to appear so he prays the same to be heard exparte and by way of written submission. This court was served by proof of service and granted the appellant prayers but the applicant did not file his submission as ordered without good reasons and the appeal was dismissed for failure to file written submission.

I have considered the reason advanced by the applicant; from the outset, I wish to state that I am not convinced by the said reasons that

the applicant brought his written submission on time and misplaced because he failed to tell this court who misplaced his written submission. Also he failed to bring to this court a proof of that allegation for example the affidavit of the said person who misplaced his document, as it is known that who alleges must prove, failure of that proof makes this court to believe that the same was not brought and if brought was not on time.

Therefore this court is in view that the applicant failed to bring the sufficient reasons to his appeal to be readmitted as it has no merit. Consequently application for readmission of land appeal No 39/2023 is hereby denied and it is hereby dismissed with costs.

It is so ordered.



DATED at **SHINYNGA** this 5th day of April 2024


R.B. Massam

Judge

5/4/2024