

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SHINYANGA SUB-REGISTRY)

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 5322 OF 2024

(Arising from Land Appeal No. HC/SHY/LND/APPEAL 27694/2023)

ACCESS BANK TANZANIA APPELLANT
(CURRENTLY ACCESS MICROFINANCE BANK TANZANIA LIMITED)

VERSUS

ELIZABETH MINZA.....1ST RESPONDENT

PAUL MATIKU TUBETI2ND RESPONDENT

RULING

Date of Last Order 24.05.2024

Date of Ruling: 14.06.2024

MWAKAHESYA, J.:

This is an application for setting aside a dismissal order dated 26.02.2024 in respect of Land Appeal No. 27694/2023. The same has been preferred under Order XXXIX rule 19 of the Civil Procedure Code (the CPC) and has been brought by way of chamber summons and is supported by the affidavit of Happiness Godfrey Mangowi, learned counsel for the applicant. The respondents refused service and thus,

upon proof of the same, on 16.04.2024 I gave an order that this matter is to proceed *ex parte* against them.

A brief background of this matter is that, the applicant had instituted Land Appeal No. 27694/2023, before this court, challenging the decision of the District Land and Housing Tribunal for Kahama at Kahama. On 26.02.2024 when the same was scheduled for hearing, the applicant's counsel, without notice, was not in attendance, prompting this court to dismiss the land appeal for want of prosecution.

Aggrieved, the applicant has filed this application citing reasons beyond the control of its counsel for the nonappearance. And as alluded earlier, the hearing proceeded *ex parte* against the respondents, the applicant enjoyed the services of Ms. Happiness Godfrey Mangowi, learned advocate.

Ms. Mangowi submitted that, the reason for her nonappearance on 26.02.2024 was due to the fact that she was looking after her sick child, who had blood infection and other ailments. Thus, she could not leave her and travel to Shinyanga on 25.02.2024 and attend court on 26.02.2024. In her affidavit in support of the application the learned counsel has attached the relevant medical forms to substantiate her narration.

The learned advocate submitted further that, having known that she could not attend the court on 26.02.2024 she contacted a court clerk one Lilian Daudi and requested her to connect her with an advocate that can hold her brief. The said court clerk was able to get hold of one Revocatus Alexander Sepetu, an advocate, and the latter informed her that the Land Appeal No. 27694/2023 was to be entertained after criminal appeals, and he could not wait for the same since he was in a hurry as he was travelling to Mwanza for other official duties. To substantiate this, an affidavit sworn by the said Revocatus Alexander Sepetu was annexed and it details what has been submitted by Ms. Mangowi.

She went on to submit that, the pre-requisites for setting aside a dismissal order are found under Order XXXIX rule 19 of the Civil Procedure Code where the applicant has to prove that he was prevented by "sufficient cause" from appearing when the appeal was called for hearing. It is her belief that what transpired on her part, which culminated to her non-appearance, amounts to sufficient cause. The learned advocate finished her submission by praying for the court to set aside the dismissal order dated 26.02.2024.

I shall now endeavour to determine the matter in accordance with the law, beginning with quoting Order XXXIX rule 19 of the CPC which states 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."*
[Emphasis mine].

As to what amounts to "sufficient cause" is a question of fact. There is no clear definition, but it depends on the peculiar circumstances of each case. The counsel for the applicant has gone to great lengths to establish on how illness befell her child on the eve of the hearing of Land Appeal No. 27694/2023 and thus she was not able in the shortest time available to attend the hearing. She even requested assistance from a fellow advocate to hold her brief, but in vain. An affidavit of the said advocate has also been presented to confirm what she has submitted. I believe the sequence of events narrated by the learned counsel amounts to sufficient cause within the purview of Order XXXIX rule 19 of the CPC.

Therefore, I am inclined to find the application meritorious and it is hereby allowed. The dismissal order made by this court on 26.02.2024 in Land Appeal No. 27694/2023 is set aside, and Land Appeal No. 27694/2023 is restored accordingly. Due to the obvious circumstances leading to this application I make no order as to costs.

It is so ordered.




N.L. MWAKAHESYA
JUDGE
14/06/2024