

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

LAND APPEAL No. 53 OF 2021

*(Originating from The Judgment of Maswa District Land and Housing Tribunal at
Maswa Application No. 103 of 2019)*

**THE BOARD OF TRUSTEE OF TANZANIA MISSION REVIVAL
CHURCH.....APPELLANT**

VERSUS

**THE BOARD OF TRUSTEE OF PENTECOSTAL
EVAGEL.....RESPONDENT**

JUDGMENT

12nd February, 2024 & 10th May, 2024

MASSAM, J.

The appellant in this appeal once filed a suit in the District Land and Housing Tribunal through application No 13/2019 to which on 30.06.2020 the trial tribunal dismissed it for non-appearance of the Applicants.

The applicant herein, made an application in the District Land and Housing Tribunal No 103/2020 with intent to restore it, which upon hearing the application, the trial tribunal reached its decision that the appellants had no sufficient reasons to restore the suit hence the application was dismissed with costs.

During hearing of this appeal, before L. Hemed J ,the appellant for his unknown reasons did not appeared and the matter was dismissed for want of prosecution. Appellant again brought an application no 63 of 2022 praying this court to set aside the dismissal order and re admit the land appeal no 53 of 2021 in order to be heard on merit. This court after heard the said application grant the said prayers and the said appeal was restored and appellant brought two (2) grounds of appeal that:

- 1. That the Honorable chairman erred both in law and fact for deciding that the applicant did not bring the ticket while I was attached on the documents.*
- 2. That the Honorable chairman erred both in law and fact by not tracing the background of the case and nature of the clerks who previously caused a misunderstanding with the applicant.*

In the hearing of appeal both parties were unrepresented, Respondent was served with summons but denied to sign the same and did not make appearance to this court and hence the appeal was heard *exparte*, and by the consent of this court the appeal was heard by way of written submission.

On his submission the appellant urged both of his grounds to the effect that section 95 of civil procedure code cap 33 R.E 2019 gives unlimited powers to the courts and tribunals to give any orders which deem fit and just to grant. He added by said that order 1x Rule1 (1) of CPC said that: *"where the suit is wholly or partly dismissed under rule 8 the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action ,but he may apply for an order to set the dismissal aside and if he satisfies the court that there was a sufficient cause for his nonappearance when the suit was called on for hearing the court shall make an order setting aside the dismissal order upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit"*

Again, he started that there is no definition of what amounts to the sufficient reasons however the court/ tribunals must consider circumstances of each case to determine whether the applicant has shown good and reasonable cause as was decided in **The Registered Trustee of the Archdiocese of Dar es salaam Vs The Chairman Bunju Village Government and 4 Others**, Civil Appeal No 147 of 2006, CAT, DSM (Unreported) page 9.

He submitted that in application No 103/2020 he explained that he did not make appearance because the bus he was travelling with broke down and proved the same by tendering bus tickets as a proof, he added that it was sufficient reason. Also he said that the act of the trial tribunal to dismiss his application was to deny him his right to be heard which is against Article 13 of The Constitution of Republic of Tanzania, 1977. Again appellant said that the same costed him a lot as the tribunal could wait for him as it was his first time to fail to appear. Lastly he prays his appeal to be allowed and order the restoration of the application no 13 of 2019.

After a careful consideration of the appellant's submission the record and the law, and now the point for determination is ***whether this appeal is meritorious.***

To start with, 1st ground of appeal appellant complained that the tribunal erred in law and fact for deciding that the applicant did not bring the ticket while it was attached on the documents and the same was good cause for his non-appearance, In dealing with this ground, this court is its view that, is true that the term sufficient cause is not yet defined as it was decided in the case of **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987) and **Tanga**

Cement Company Limited Vs Masanga and Amos A.

Mwalwanda, Civil Application No.6 of 2001 where it was held that;

"What amounts to sufficient cause had not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant."

However, the courts/tribunal while exercising its discretion on whether to restore the suit, has to construe such good cause depending on the circumstances of each case judiciously. The applicant submitted that the reasons for his non-attendance in the land application No 13/2019 was due to the bus break down and that he attached the ticket on the documents filed in the trial tribunal. This court have perused the proceedings in the trial tribunal and the same cannot be located, also the Hon chairman had admitted that despite that the appellant pleaded to have attached the bus ticket yet were not enclosed for certification. Mindful the attachment of document/exhibits is not tendering it the appellant was burdened to pray the tendering of the bus tickets before the tribunal to prove his assertion that, it is true that on the said day, he was travelling to Shinyanga which would have persuaded the tribunal

that, the bus he was travelling with had break down and therefore he could not make his appearance to the court. See the case of **Patrick William Magubo Vs Lilian Peter Kitali**, Civil Appeal No 41 of 2019.

Also, in In **Sabry Hafidhi Khalfan v. Zanzibar Telecom Ltd (Zantel) Zanzibar**, Civil Appeal No. 47 of 2009(unreported), the court was of the view that it is a principal of law that annexures are not evidence for the court of law to act and rely upon. It was stated that:

*"We wish to point out that **annexures attached along with either the plaint or written statement of defense are not evidence**. Probably It is worth mentioning at this juncture to say the purpose of annexing documents in the pleadings. The whole purpose of annexing documents either to the plaint or the written statement of defense is to enable the other party to the suit to know the case he is going to face. The idea behind is to do away with surprises. **But annexures are not evidence**."* [Emphasis added]

Therefore, the appellant had an obligation to tender the said tickets as part of his evidence at the trial tribunal something which was not done let alone attaching them as he alleges. Moreover, his attempt to produce it before this court is an afterthought, he was supposed to do

it before the trial tribunal and not at the appeal level. So, this ground fails.

With respect to ground No 2, the appellant complained that the trial chairman erred in law and fact by not tracing the background of the case and nature of the checks who previously caused a misunderstanding with him. In addressing the same, this argument is a new issue before this court it was not even addressed by the Hon Chairman to the trial tribunal. I thus to entertain it is to put Hon. Chairman on trouble without any cause, the appellant ought to have placed this complain before Hon Chairman for determination. And as a matter of general principle, an appellate court cannot allow matters not taken or pleaded in the court below, to be raised on appeal, See **Hotel Travertine and Others vs. NBC Ltd** [2006] TLR 133, **Tanzania Investment Bank vs. Meis Industries Company Ltd and Another**, Civil Application No. 126 of 2010 (unreported) and **Mosses Msaki vs Yesaya Ngeteu Matee** (1990) TLR 90, to cite as a few. Again, this ground also fails.

According to the above reasons, this court find out that appellant failed to attach the said ticket to his case in order to be a sufficient ground for restoration of his application, thus this court is not blessed to justify the reasons adduced by the appellant to be a sufficient cause and

thus to proceed to dismiss the same for being for being devoid of any merit.

In regard to the circumstances of this case, No orders as to costs.

It is so ordered.

DATED at SHINYANGA this 10th day of May, 2024.



A handwritten signature in blue ink, appearing to read "R.B. Massam".

**R.B Massam
JUDGE
10/05/2024**

Right of appeal explained.



A handwritten signature in blue ink, appearing to read "R.B. Massam".

**R.B. Massam
JUDGE
10/05/2024**