

IN THE HIGH COURT OF TANZANIA  
LAND DIVISION  
AT DAR ES SALAAM

LAND REVISION NO. 55 OF 2009

*(From the Decision of the District Land and Housing Tribunal of Temeke District at Temeke in Land Application No. 105 of 2009)*

NEW SUDAN BUILDING MATERIALS }  
COOPERATIVE SOCIETY LIMITED } .. . . . . . APPLICANT  
Versus

SOPHIA AMIRI MRISHO (as Administratrix }  
of the estate of the late AMIRI MRISHO) } .. . . . . .RESPONDENT

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RULING

J. A. DE-MELLO, J.:

This was an application made under **S. 79 (1) (a) (c) and S. 95** of the **Civil Procedure Code Act Cap 33** of the Laws of Tanzania R.E of 2002 and, any other enabling provisions of the law for orders that:

The Honorable court may be pleased to call for record of the Temeke District Land and Housing Tribunal Application No. 105 of 2009 and revise, the proceeding therein on the grounds that the said District Land and Housing Tribunal acted with material irregularity and, had no jurisdiction to make the orders it made, while there was a pending application before the tribunal. Cost to

be provided for(c)Any other orders that the court may deem just and equitable to grant. When this matter was called for hearing on this day both counsels conceded to the instructions they held for their parties. That is, one **Banturuki** appearing for the applicant while **Fungamtama K.** for the respondent.

In addressing the court, senior counsel **Fungamtama** informed that as per the scheduling orders on record, he was ready to proceed to hear the application made by the applicant and of which all parties were duly aware of. In a strange turn of events counsel for the applicant responded in the negative that, in as much as he is representing the applicant he is unable to proceed for reasons that his partner one advocate **Dr. Lamwai** is the one in full conduct of the matter. In brief he claimed not to be conversant with the facts of the matter though he is in appearance.

Having been satisfied that parties were duly served for hearing and are in court with their representatives, the court ordered for the matter to proceed with the hearing at on or before 11.00 a.m paving way for the applicants counsel to consult and resume hearing. after Upon return and again in the absence of **Dr. Lamwai**, counsel **Banturuki** coming from the same Law Firm, gave a very startling submission with a series of trooted excuses, all with a view of avoiding hearing of the matter and had this to;

That, advocate Lamwai was scheduled to appear before **Nyangarika Judge** for **Commercial Case Number 54/2008** which was to commence at 11.00am. That there is also a notice of appeal for a matter of almost the same or rather similar nature which was before A. **Munisi Judge** and , which has been struck out for being incompetent, that is **Civil Revision Case No. 55 of 2009**.

Further yet, is another matter set for the 26<sup>th</sup> July, 2012 an application for stay of execution before **Mutungi B. Judge** apparently from this same court and whose details and reference was not sufficiently availed .

In a bitter and quite disturbed manner, Counsel for the respondent in response to the applicants' submission was totally dissatisfied with this series of excuses from the counsel for the applicant. He did not hesitate to call upon the court to outrightly dismiss the failure refusal and or neglect by the applicant to prosecute their matter. He found it weird for counsel emanating from the same firm coming with lame excuse and failing to confine himself to the relevance and importance of a matter before the court which has been set for hearing. He was of the view that counsels for the applicant have given little or no regard at all to this a matter which has been called for hearing at 9.00 am and opted to appear if at all, to another commercial matter at 11.00 am. That if serious the other counsel had ample time to appear and prosecute his case before the land

division and still make it for the other commercial case at 11.00. He found it improper for the present counsel to introduce himself as representing the applicant while knowing clearly of the limitation to proceed, now taking a different turn. This he said, was abuse of court processes and should not be left to prevail. He reiterated that it is the courts who are in control of the diaries and no one else. He finally called upon the court to resort to the law applicable under Order 1X Rule 8 of the CPC to dismiss the matter.

Having carefully listened to the submissions by the said two counsels I am highly convinced that the matter deserves to be dismissed. Undoubtedly no sufficient and good grounds have been adduced to justify adjournment. My simple thinking is that most of the grounds advanced are evasive and irrelevant.

Counsel for the applicant have failed to give the matter its due respect and weight, more worse when they are the ones moving the court. I am satisfied that counsels for the applicant were not prepared and thus failed to prosecute their matter when it was called for hearing on the case.

I am sharing the view in the holding of the case of **TBL versus Edson Dhobe Misc. Application number 96 of 2006 (unreported)** that;

**"Courts orders should be responded and complied with. Courts should not condone such failures, and to do so is to set a bad**



precedent and invite chaos. The courts should exercise firm control over the proceedings".

In this instance the applicants have failed to respect court's order. Failure to prosecute is equaled to non appearance and the consequences is dismissal.

For the benefit of all and considering the spirit behind the fast tracking of back logs of land matters, non-appearance of parties who have been duly served and appear but fail to prosecute cannot be entertained. Counsels are reminded to adhere to the principles of timely and effective justice and that at no instance shall the court be taken for granted and process thereof be abused.

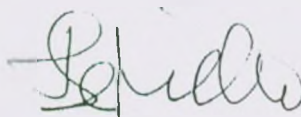
In this premise, I concede to the well founded substantive submission as raised by the counsel for the respondent and I am left with no option other than to dismiss the application and order costs thereof as prayed.



J. A. De-Mello

J U D G E

Right of appeal is explained:



J.A DE-MELLO

JUDGE

26/07/2012

