

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

MISCELLANEOUS LAND APPLICATION NO. 43 OF 2012

EMMANUEL SWAIAPPLICANT

VERSUS

HASSAN HYDARRESPONDENT

RULING

10th & 14th Feb, 2014

RUMANYIKA, J

The application is for restoration of land appeal No. 10 of 2009. Dismissed for non appearance of the applicant, by this court on 17.10.2012. It is brought under Order XXXIX rule 19 of the civil procedure code cap. 33 R.E 2002 and any such enabling provisions of law.

The application is supported with affidavit of Emmanuel Swai (applicant).

Mr. K.K.Kayaga learned advocate appears for the applicant. The respondent appears in person.

Having adopted almost the whole contents of the supporting affidavit, whereby asking for order of hearing inter partes, Mr. Kayaga

submitted that the applicant had been vigilant and committed stoutly. Following up the matter through out. In that, and this was not contradicted, that he was in court premises on the material date and time. Having arrived by Ally's bus from Nzega, but now in the room waiting for his appeal to be called out.

That as time went on, and nothing came out, he came to learn from a bench clerk, that the appeal was already dismissed for non appearance. Then without ado, and having obtained the dismissal order in the very afternoon, he processed and filed this application just a day later. That all this suggest that the applicant was not negligent or at all.

The respondent on his part, had nothing material to submit. Only that he was an alien to the matter. And if anything, only somebody else namely Nawab Abdulhaman was the responsible party to the application. In fact the applicant was just wasting his time. Insisted the respondent. That is it.

The yard stick in the like applications is always whether non appearance of the applicant leading to the matter being dismissed was justified at law. The respondent did not even attempt to contradict the evidence, that the material appeal was dismissed like inadvertently. Because, being aware of the hearing date, and having travelled all the way from Nzega, the applicant was in court premises, but did not hear his matter being called out. Just before it was

dismissed. Leave alone the fact that then he processed and filed this application, just a day later.

This is to say that a totality of all this suggests that non appearance of the applicant in court room at the material time was very unfortunate. But also justified. Hence good, reasonable and sufficient ground. Upon which it is now compelling that I vacate the dismissal order. The 17.10.2012 dismissal order vacated. Land appeal No. 10 of 2009 restored.

R/A explained.

S.M.RUMANYIKA

JUDGE

12/02/2014

Delivered under my hand and seal of the court in chambers. This 14/02/2014. In the presence of the parties.

S.M.RUMANYIKA

JUDGE

14/02/2014

