

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND CASE NO. 496 OF 2017**

*(Originating from Misc. Land Application No. 316 of 2016)*

**MICHAEL TUNGARA CHACHA.....APPLICANT  
VERSUS  
JOHN BENARD MASSAWE.....RESPONDENT**

*Date of last order: 23/03/2018  
Date of Ruling: 09/05/2018*

**RULING**

**Makuru, J.:**

This application has been sought under section 68(e), 95 and Order XLIII Rule 1(2) of the Civil Procedure Code Cap 33 RE 2002 and section 2(3) of the Judicature and Application of Laws Act (JALA). The Applicant, Michael Jungara Chacha is seeking for orders, among others, that this court be pleased to set aside a dismissal order dated 05/06/2017 in Misc. Land Application No. 316 of 2016. The application is supported by the affidavit of Amin Mohamed Mshana, learned counsel for the Applicant.

When the matter was called on for hearing Mr. Mshana learned counsel appeared for the Applicant while the Respondent was represented by Mr. Mlwale learned counsel.

Arguing in support of the application, Mr. Mshana submitted that the reason for failure to enter appearance was because he appeared before Hon. Wambura, J. in Another case, **Yakin Juma Mshana vs KCB Bank (T) Ltd and Another**, Land Case No. 268 of 2017. According to him, when he appeared before Wambura, J. it took so long and when he came out he found that his case had already been dismissed. In his further submission the learned counsel contended that, if this application is not granted he stands to suffer irreparable loss and that the appeal stands overwhelming chances of success.

In reply thereto Mr. Mlwale argued that, no sufficient cause has been shown to warrant grant of the orders sought. According to him, the averment that Mr. Mshana appeared before Wambura, J. is not backed up by any evidence.

In rejoinder, Mr. Mshana reiterated his submission in chief and insisted that, he has adduced sufficient reasons for the application to be restored.

I have considered the arguments advanced by both sides. In determining an application of this nature the court has to consider whether the

Applicant has adduced sufficient reasons to convince the court to grant the application sought.


I am of the view that it is apposite to understand what amounts to sufficient cause. In the case of **Benedict Mumello versus Bank of Tanzania**, Court of Appeal of Tanzania Civil Appeal No. 12 of 2002 (Dar es Salaam Registry, Unreported) in which Kaji J.A. cited with approval the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported), whereby Nsekela J.A., as he then was, had this to say:

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

The reasons adduced in the affidavit in support of this application is that, on the day set for hearing, Mr. Mshana learned counsel for the Applicant appeared before Wambura, J. According to him, the proceedings before

Wambura, J. took long. Hence, when he came out he found that the application had already been dismissed for want of prosecution. I am of the considered view that this is a sufficient reason and I am convinced to grant this application as sought.

Under the circumstances, this application is hereby granted without costs.



**C.W. Makuru**  
**JUDGE**  
**09/05/2018**

**Court:**

Ruling delivered in court this 09<sup>th</sup> day of May, 2018 in the presence of the Applicant in person and in the absence of the Respondent.



**C.W. Makuru**  
**JUDGE**  
**09/05/2018**