

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

**MISC. LAND APPLICATION NO. 775 OF 2017**

*(Arising from Misc. Land Application No. 93/2014 in the High Court (Land Division) of Tanzania  
at Dar Es Salaam.)*

**MICHAEL HAULE.....APPLICANT**

**VERSUS**

**BRUNO MSIGALA .....RESPONDENT**

*Date of last Order: 16/5/2018*

*Date of Ruling: 22/6/2018*

**R U L I N G**

**MGONYA, J.**

This is a ruling from an Application of setting aside the dismissal order delivered on 27<sup>th</sup> August, 2015 by Hon. Mgaya, J. ( as she then was) vide Misc. Land Application No. 93 of 2014 which was supported by Affidavit of Michael Haule.

The Applicant Michael Haule has filed an Application under the provisions of **Order IX Rule 9 (1) of the Civil Procedure Code Cap. 33 [R. E. 2002]** praying for the following orders:-

**1. That the Hon. Court be pleased to set aside the Dismissal order dated 27<sup>th</sup> August, 2015 issued by Hon. F. W. Mgaya vide Misc. Land Application No. 93.**

The Application was supported by the sworn Affidavit of Michael Haule who got assistance of Legal Aid from Legal Human Right Centre.

On 16<sup>th</sup> May, 2018 when the case came for mention, Applicant informed this Court that, the Respondent was duly served but he refused the service hence this Court ordered that, since there was a proof that the Respondent refused service, the Application before the court was to be heard *Exparte* by way of Written Submission. The Applicant was availed with 14 days to file his submission in respect of the Application.

In supporting the Application for setting aside the dismissal order, the Applicant averred that, at first he instituted a suit in the Ward Tribunal of Kibaoni at Ifakara District against the Respondent whereby it was ruled in his favour.

The Respondent was aggrieved by the decision and appealed in the District Land and Housing Tribunal of Kilombero vide **Appeal No. 108 of 2012** which was allowed.

Thereafter, the Applicant was also aggrieved by the said decision and intended to Appeal but he was late on lodging the

same and that the Applicant applied for extension of time to file an Appeal out of time in High Court of Land Division vide Misc. Land Application No. 93 of 2014.

The Applicant submitted further that, after obtained a copy of Judgment, there was a delay in lodging an Appeal due to the other proceedings on the same subject matter which was wrongly filed in the District Land and Housing Tribunal of Kilombero.

Later, the Applicant filed an Application for revision which was dismissed and the Applicant was advised to lodge an Appeal; hence, the Application of extension of time arose vide **Misc. Land Application No. 93 of 2014.**

The Applicant submitted that, the said application was scheduled before this Court on **24<sup>th</sup> July, 2015**, while the Applicant was in the 3<sup>rd</sup> floor waiting the Court clerk instruction to go to the judges chamber's chamber on the 7<sup>th</sup> floor; while hearing to judge chamber together with the Respondent, the electricity went off and the elevator got struck. After the electricity come back, the Applicant and the Respondent managed to go to the chamber only to be informed that the matter was scheduled on **28<sup>th</sup> August, 2015.**

Further, the Applicant submitted that on the scheduled date, they both appeared according to the instruction by the Court Clerk and only to be informed that the matter was before the Judge on the 27<sup>th</sup> August, 2015 and was dismissed for non-appearance.

The Applicant stated that, the non-appearance was caused by misinformation of the scheduled date caused by the Court clerk mistake. Further states that, it was on that reason the Applicant and the Respondent could not attend on the 28<sup>th</sup> of August, while the matter was scheduled on the 27<sup>th</sup> August, 2015.

The Applicant submitted that, his absence on the hearing date was caused by the court clerk mistake; Hence the Applicant prayed this Court to restore the Application to be heard on merits; and set aside the dismissal order in **Misc. Land Application No. 93 of 2014**, and that the same can be determined to its finality. The Applicant cited **Article 13 (6) (a) of Constitution of URT 1977; to support his Application.**

The Applicant cited a case of ***FAROUK KARAMALDIN VS. JUSTINAN R. KAHWA 1996 TLR 100*** High Court where it was stated:-

***"It is against the rule of natural justice to condemn a man without giving him a hearing. It is against the constitutionally rights to deprive a man of property without a hearing."***

Finally the Applicant sought justice from this Court so that his Application could be restored and enabled him right to be heard. Thus the Applicant prayed for this Court to find just and fit to grant to set aside dismissal order entered on 27<sup>th</sup> August, 2005 by Hon. Mgaya, J."

Having gone through the submissions by the Applicant, the grounds of affidavit and considered the relevant law, I have observed that the main issued for consideration is whether sufficient reasons have been adduced to warrant this Court to exercise its discretionary powers to grant the Application.

It is clearly stated by the law that there must be sufficient reasons for Court to exercise it discretionary power of setting aside its order made thereon.

In the case of ***NASIBU SUNGURA VS. PETER MACHUMU TLR [1998]*** it was held that:-

***"In an Application to set aside the order dismissing the suit for non-appearance, the important question is not whether the case for the Applicant is soundly maintainable and meritorious, but whether the reasons furnished are sufficient to justify the Applicant's non- appearance on the date the suit was dismissed."***

In line with the above, and with consideration of the affidavit of the Applicant, all that is expected to show that the non-appearance was not caused or contributed by negligence on his part.

Up on going through the Applicant's submission, I have noted with concern the reason of Applicants to miss the 27<sup>th</sup> August, 2015 proceedings which led to the dismissal of the Applicants Misc. Land Application No. 93 of 2014; was dates misinformation by the Court Clerk. In this aspect, the Court clerk mentioned is the third party to the entire cause. It is for that matter, in the event where she/he was the cause of delay, the law requires that the said averment be supported by the supplemented Affidavit by the said third party for the Applicant's reason to have weight.

In the case of ***BENEDICT KIMWAGA VS. PRINCIPAL SECRETARY MINISTRY OF HEALTH, Court of Appeal of Tanzania in Civil Application No. 31 of 2000*** sitting at Dar es Salaam had the following sentiments:-

***"If an Affidavit mentions another person, then that other person has to swear an Affidavit. However, I would add that, that is so where information of that other person is material evidence because without the other affidavit it would be hearsay."***

Further, in the case of ***GIBBS EASTERN AFRICA LTD VS. SYCON BUILDERS LTD AND TWO OTHERS, Civil Application No. 5 of 2005*** the Highest court of the land had this to rule:-

***"Facts deponed upon information from a third party should be supported by a supplementary affidavit from the said third party to be of value."***

It is from the above legal principle, it is my firm view that, the Applicant's prayer lacks the essential elements of law to convince the Court to grant the prayer sought. This is due to the absence of that third party supplementary affidavit to command weight to the prayer sought.

In the event therefore, I proceed to **dismiss the Application in its entirety.**

Since the Application was determined *Exparte* and further since the same is being assisted by the legal and Human Right Centre through Legal Aid, **I make no order as to costs.**

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**22/6/2018**

**COURT:** Ruling delivered in the presence of Applicant and Ms. Emmy in my chamber today 22<sup>nd</sup> June, 2018.

**L. E. MGONYA**

**JUDGE**

**22/6/2018**