

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 351 OF 2019**

*(Arising from the Judgment in Misc. Land Appeal No. 176 of 2017 in the High Court of Tanzania)*

**HASSAN HAMIS NZOMARI .....APPLICANT**

**VERSUS**

**EDMUND THOMASI LUSEBE.....1<sup>ST</sup> RESPONDENT**

**SALUM SAID.....2<sup>ND</sup> RESPONDENT**

**BALTAZARI JOSEPH KIMARO.....3<sup>RD</sup> RESPONDENT**

**MKOBA A.....4<sup>TH</sup> RESPONDENT**

*Date of ruling 27/11/2020*

*Date of the last order 02/10/2020*

**RULING**

**I. MAIGE, J:**

This is an application for setting aside the order of this Court dismissing the appeal and restoring the appeal. The application is well founded on the affidavit of the applicant. It was opposed by the joint counter affidavits of the first and third respondents.

By the order of the Court dated 4<sup>th</sup> day of June 2020, the application was argued by way of written submissions. Both parties appeared in persons and were not represented. Like the applicant, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents

filed the written submissions. While the second respondent filed a separate written submissions conceding with the application, the first and third respondent filed a joint written submissions contending that sufficient cause for the grant of the application has not been demonstrated. On his part, the fourth respondent neither filed a counter affidavit nor written submissions. The matter proceeded against him *ex parte* therefore. I have considered the rival submissions and I will determine the application hereunder.

The order dismissing the appeal was delivered on 18<sup>th</sup> June 2019. The applicant claims in affidavit that he was present in court on the said date. It is unfortunate that he did not hear his case being called. He has attached in the affidavit, an extract Reception Registry Book to suggest his presence. Its validity has not been doubted in the counter affidavits.

I subscribe to the applicant that in determining an application for setting aside a dismissal order, the test involved is whether the non- appearance by the applicant on the date of the dismissal was justified. Therefore, in **Nasibu Sungura v. Peter Msechu Civil Appeal No.24 of 2017**, this Court observed that:-

*"in an application to set aside the order dismissing the suit for non appearance, the importance question is 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 this matter, it is irrefutable that on the date of dismissal, the applicant was present in the court premises. What prevented her from appearing is that he did not hear his case being called. The dismissal order was on 18<sup>th</sup> June 2019. This application was filed on 25<sup>th</sup> June 2019. It is just within 6 days from the date of the dismissal. This exhibit how prompt the applicant was in addressing the anomaly upon discovery. I cannot agree with the 1<sup>st</sup> and 3<sup>rd</sup> respondents that he was negligent.

In my opinion therefore, the applicant has successfully demonstrated sufficient cause for his non-appearance on the date of the dismissal. The application is therefore granted. The order dismissing the Misc. Land Appeal No. 176 of 2017 is hereby set aside and the appeal restored. Costs to follow events.

It is so ordered.

 Dated and delivery at Dsm this 27<sup>th</sup> day of November 2020

   
I. MAIGE

**JUDGE**

**27/11/2020**

**Date: 27/11/2020**

**Coram:** Hon. M.C. Kallomo, Act - DR

For the Applicant: Present in person

For the 1<sup>st</sup> Respondent }  
For the 2<sup>nd</sup> Respondent } Absent

For the 3<sup>rd</sup> Respondent: Present

For the 4<sup>th</sup> Respondent: Absent

**RMA:** Marco

**ORDER:** Ruling delivered on 27<sup>th</sup> November, 2020. In the presence of the Applicant, 1<sup>st</sup> and 3<sup>rd</sup> Respondent.



A handwritten signature in blue ink, appearing to be "M.C. Kallomo", is written over a horizontal line.

M.C. Kallomo  
**ACT - DEPUTY REGISTRAR**  
**27/11/2020**