

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 588 OF 2019

ROBERT FRANK YOHANA.....1ST APPLICANT
CLEMENT RAPHAEL.....2ND APPLICANT

VERSUS

ROSEMARY LYIMO1ST RESPONDENT
BREAK THROUGH FOUNDATION.....2ND RESPONDENT
REGISTERED TRUSTEES OF EFATHA MINISTRY...3RD RESPONDENT
**(Application for setting aside dismissal order of
this Court in Land Case No.54 of 2017)**

RULING

MGETTA, J:

On 16/10/2019, through a legal service of Mr. Samwel Shadrack Ntabaliba, the learned advocate, two applicants namely Robert Frank Yohana and Clement Raphael, lodged a Chamber Summons made under **Order IX rule 9 of the Civil Procedure Code, CAP.33** requesting this Court to set aside its dismissal order made on 19/9/2019 (Hon. Mallaba,J as he then was). The application is supported by the affidavit sworn by the learned advocate.

It was ordered by this court that the application be disposed of by way of written submissions which were indeed filed by the respective

advocates. The applicants' learned advocate filed his written submission on 25/3/2020; and, respondents namely Rosemary Lyimo, Break Through Foundation, and Registered Trustees of Efatha Ministry, through a legal service of LRK Law Chambers, filed their written submission on 06/4/2020. A rejoinder was filed on 15/4/2020. I commend both learned advocates for their respective researched submissions which were of great assistance to me.

Written submissions filed in this application and the records of Land Case No. 54 of 2017 show that the present applicants were plaintiffs, and present respondents, the defendants. The records show further that after mediation process was marked failed, the file was remitted to the trial judge and both parties became aware of the fact that their case was to be heard and determined by the trial judge.

On 6/5/2019 when the case was called on for final pretrial conference applicants and their advocate did not appear. No reason for their non appearance was assigned. The case was adjourned up to 13/6/2019, the date Ms. Sarah Bushiri, the learned advocate appeared for the applicants, and Ms Lydia Materu, the learned advocate appeared for the respondents. This Court ordered the two learned advocates to exchange issues and the case was adjourned upto 19/8/2019. When the

matter was called on for hearing on 19/8/2019, the applicants and their advocate were absent without any reason. Mr. Thobias Kavishe, the learned advocate for the 3rd respondent appeared on that date and prayed for another hearing date because the applicants were not present. The prayer was granted, and the case, adjourned. Once again the Court ordered that the advocates and/or their clients to exchange issues. On 19/9/2019 when the case was called on for hearing, once again the applicants and their advocate did not appear, while Ms Pendo Ulomi, the learned advocate for the defendants, appeared, but the order to exchange issues had not yet been complied with. On that date, Ms. Pendo Ulomi, the learned advocate for the respondents moved the trial judge to dismiss the suit for non appearance of the Plaintiffs as provided for under **Order IX rule 8 of CAP. 33**.

Going through the affidavit supporting the application as well the written submission filed by applicants' advocate, I have learned that the only advanced reason for non appearance of the applicants and or their advocate is sickness of the advocate, Mr. Shadrack from Kazi Attorneys, the firm which comprises of more than one advocate. The court is not told about the whereabouts of the applicants themselves on those days. In my view, it could be prudent for the advocate firm to field another advocate

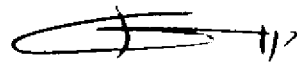
other than Mr. Shadrack if at all he felt sick, as it happened on 13/6/2019, when Ms Sarah Bushiri, the learned advocate appeared for applicants. Not only that but also his clients, the applicants have a duty to come and tell the court about the sickness of their advocate.

Well, assuming that applicants' advocate was prevented to appear on that day ie 19/9/2019 by sickness and instead he was rushed to Mnazi Mmoja Hospital, the question left unanswered is what about the previous days of his non appearance. The failure to answer that question left much to desire as to the authenticity of the hospital chit he attached onto his affidavit. The record shows that neither the applicants nor their advocate, Mr. Shadrack had appeared in court right from the date the file was remitted to the trial court from mediation center until on 19/9/2019 the date the case was dismissed. I am therefore persuaded to say that the applicants were given the right to be heard but they refused to utilize that right by opting not to appear when the matter was called on for final pretrial conference hearing. Their several non appearances made the court intolerable and ceased to inordinately adjourn it; hence dismissal order.

In the event, in absence of sufficient reasons for non appearance of the advocate and/or the applicants (Plaintiffs) for several occasions had made me conclude that both (Plaintiffs and advocate) were inactive and or

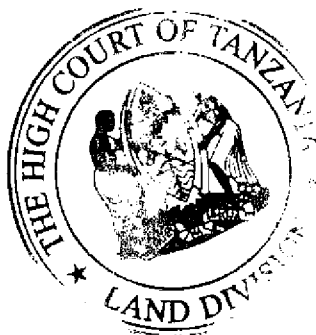
negligent. This Court could not condone inaction or negligence of the parties to a case. Litigation must be and always come to an end. Thus, the application is accordingly dismissed with costs.

It is so ordered.



J.S.MGETTA
JUDGE
8/6/2020

COURT: This ruling is delivered today this 8th June, 2020, in the presence of Mr. Gibson Ngojo the learned advocate, h
Samwel Shadrack, the learned advocate for the applicants, but
in absence of the respondents for reason(s) known to
themselves.



J.S.MGETTA
JUDGE
08/6/2020