

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

**MISC. LAND APPLICATION NO. 681 OF 2019
(Arising from Land Case 372 of 2015)**

DEVOTA MATHEW MINJA.....APPLICANT

VERSUS

TITO SIMON HAULE.....1ST RESPONDENT

TANZANIA POSTAL BANK (TPB).....2ND RESPONDENT

MSOLOPA INVESTMENT CO. LIMITED.....3RD RESPONDENT

Last Order: 06/08/2020

Date of Ruling: 19/01/2021

R U L I N G

MANGO, J.

The applicant filed this application seeking to set aside the dismissal order issued by this court on 6th March 2017 in Land Case No. 372 of 2015. The application is by way of chamber summons made under Order IX Rule 9(1) and section 95 of the Civil Procedure Code, [Cap 33 R. E. 2002], supported by an affidavit sworn by Devota Mathew Minja. The application is opposed by the 2nd and 3rd respondent and they filed a counter affidavit sworn by Innocent Mhina to that effect. The first respondent did not file a counter affidavit. His failure to file a counter affidavit presupposes that he does not oppose the application.

Parties to this application had legal representation, the Applicant was represented by Mr. Mugusu Mwego, learned advocate, the first respondent enjoyed legal services of Mr. Richard Girai learned advocate while the 2nd and 3rd respondents were represented by Mr. Innocent Mhina learned advocate. On 8th June 2020 this court ordered the application to be argued by way of written submissions. With exception of the first respondent, parties to this application complied with the court order.

In his submission in chief, counsel for the applicant submitted that the applicant who was the plaintiff in Land Case No. 372 of 2015 failed to appear when the case was scheduled for hearing on 6th March 2017 for a good reason. He argued that the applicant was a Member of Parliament and was also a member of Parliamentary Committee for Lands, Natural resources and Tourism. On 6th March 2017, the applicant was at Ngorongoro attending a special task assigned to her as a member of the Parliamentary Committee for Lands, Natural Resources and Tourism. The task was performed from 2nd March to 12 March 2017. He argued that the court was duly informed of the reason for non-appearance of the applicant by the applicant's counsel and the prayer for adjournment was not objected by the counsel for the first respondent. The Parliament has also written a letter to the court regarding the special task assigned to the applicant on the dates that her case was scheduled for hearing. However, the court considered non-appearance of the applicant to have no sufficient cause and took it as mere delaying tactics. The Court proceeded to dismiss the case for want of prosecution.

In his reply submission, learned counsel for the 2nd and 3rd respondents argued that the reasons for absence of the applicant on the date scheduled

for hearing of her case were not sufficient for the court to adjourn the matter. He highlighted that, on the date prior to 6th March 2017, the court issued a last adjournment order and set the matter for hearing on 6th March 2017. He argued that both the applicant and his advocate were aware that the court issued a last adjournment order and that nonappearance of the applicant on the date scheduled for hearing will render the case to be dismissed for want of prosecution. He argued also that the letter from the parliament was not yet filed to the court by the time the matter was called for hearing. According to him, the said letter was filed after the case has been dismissed thus, it was a mere afterthought. He submitted also that the court had correctly dismissed the case because the applicant's counsel failed to show a sufficient cause for the court to adjourn hearing of the case as required by Order XVII, Rule 1(1) of the Civil Procedure Code [Cap. 33 R.E 2019]

He argued further that the applicant failed to establish a sufficient cause for her non-appearance on the date the case was dismissed therefore, this court should not set aside its dismissal order. He insisted that the letter relied upon by the applicant in establishing reason for setting aside the dismissal order is a mere afterthought.

In his rejoinder, the applicants counsel reiterated his submission in chief and argued that the letter filed by the applicant is not an afterthought and it was relied by this court in granting extension of time to file the application at hand.

I have considered submissions by both parties and court record. Court record provides that the dismissal order was issued due to failure of the

plaintiff, herein the applicant, to produce proof that she was assigned other duties. The relevant part of the order reads

"This Court extended the speed track for six months in November 2016 retrospectively as the same had expired on 3/09/2016, and scheduled the hearing for two days so that the matter remains in time. However, the plaintiff has failed to proceed with hearing of the matter today. **There is no proof of the plaintiffs being assigned other duties.** I cannot proceed to extend the speed track further. I thus dismiss the matter for want of prosecution under Order IX Rule 8 of the Civil Procedure Code with no order as to costs."

The court order shows that the letter produced by the applicant was not in the hands of the court by the time the case was dismissed. In that regard, the counsel for the respondent was right that the plaintiff's counsel had not advanced any evidence regarding the alleged special task assigned to the applicant to enable the court to adjourn hearing of the matter to another date. It is also in record that the applicant was actually required to testify on her case and the plaintiff's counsel failed to proceed with the case due to her absence.

Therefore, the court had justifiably dismissed the case for non-appearance of the plaintiff during hearing date.

Despite the fact that the letter indicating reasons for the applicant's nonappearance being lodged late, it shows that the applicant was indeed engaged in very important activities of the Parliament. I am of the view that had the letter been lodged a bit early, the court would not have dismissed the case. The law, Order IX Rule 9(1) of the Civil Procedure

Code, [Cap 33 R.E 2021] allows restoration of the suit upon establishing sufficient reason for non-appearance when the dismissal order was issued.

I find the letter written to the court as evidence that the applicant was indeed assigned the special duty which barred her from attending court proceedings. Performance of public duties as the one assigned to the applicant cannot be considered as neglect of court proceedings. It establishes that the applicant had a sufficient reason for her non-appearance when her case was dismissed.

For that reason I hereby restore Land Case No. 372 of 2015. Given the nature of the application I award no costs. Each party should bear his own costs.



Z. D. MANGO

JUDGE

19/01/2021