

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISC. LAND APPLICATION NO. 22 OF 2020**

(C/O Misc. Land Application No. 7 of 2020, Land Appeal No. 21 of 2019  
originating from Land application No. 9/2017 of DLHT for Katavi)

**CLETUS SIWEZI SIMBA ..... 1<sup>st</sup> APPLICANT**

**PROTUS ANDREA RINGO ..... 2<sup>nd</sup> APPLICANT**

**VERSUS**

**MARIA ROBERT ..... RESPONDENT**

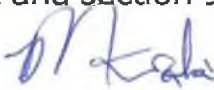
Date: 13 & 19/07/2021

**RULING**

**Nkwabi, J.:**

By chamber summons, the applicants are praying this court to restore Misc. Land Application no. 7/2020 which was dismissed for want of prosecution on 25/08/2020. The applicants also pray for any other reliefs the court may deem fit and just to grant.

The chamber summons was made under section 6 of the Judicature and Application of Laws Act Cap 1 R.E. 2002 and section 95 of the Civil Procedure

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Code Cap 33 R.E. 2019. The application is supported by three affidavits sworn by Musa Lwila, Mathias Budodi and Deogratius Phailod Sanga respectively, both learned counsel.

The application was resisted by the respondent who filed a counter-affidavit. During the hearing of the application, Mr. Sanga, learned Advocate for the applicants, adopted the contents of the affidavit as part of submissions and in addition, Misc. Land Application No. 7/2020 was dismissed for the counsel for applicant did not appear in court. The reason for non-appearance was sickness of Advocate Musa Lwila whom ought to appear in the case as per affidavit at Paragraph 6 & 7 and the affidavits of the rest of advocates.

Mr. Sanga further argued that, being sick excuses a party or advocate to appear and hence a ground to restore the application citing **Misc. Land Application No. 101/2018 Magreth Makuba v Nisile Ernest** the decision of the High Court Mbeya District Registry.

He rested his submission by saying that for interest of justice we pray Misc. Land Application No. 7/2020 be restored so that they are heard on merit. The respondent shall not be prejudiced.

In reply submission, the Respondent disputed the submission of the counsel for the applicants. He argued, they did not inform the court of the absence

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of the advocate. The case also involves the applicants in person, not of advocates. He prayed the application be dismissed with costs.

In rejoinder, Mr. Sanga learned Advocate admitted that there are three advocates in their Law firm but argued that on the given date, every advocate was engaged. It is only on that date the counsel did not appear, when we are in courts, they switch off their phones which makes it difficult to get information. The sickness came as an emergency. It is not necessary for a client to come to court. He reiterated his prayer their application be granted as the respondent will not be prejudiced. That is all.

I am of the view that, in this application, the pertinent issue that need this court's determination is:

1. Whether the applicants have assigned good cause for non-appearance of themselves and their counsel on the date fixed for hearing which resulted the case being dismissed.

I have given due consideration of the submissions of both parties. I am not persuaded with the argument made by the counsel for the applicants. In the application, they advanced two main grounds, the first being that the learned counsel was sick on the material date while the rest of the advocates in their



office were busy with appearance in other courts, and secondly, the respondent will not be prejudiced in any way.

The counsel for the applicants cited the decision of this court in **Misc. Land application no. 101 of 2018 Magreth Makuba v Nisile Ernest** High Court Mbeya District registry: *Sickness can only be accepted as sufficient reason where the applicant has provided proof to that effect.*

While, I fully subscribe to the above decision of the High Court, yet, I am really not persuaded by the argument by the applicants' counsel in the present application. It would appear, if I accept the medical sheet as true, the learned counsel had had health problems with his throat for 8 days (**1/7**). I think that the learned counsel was negligent and the medical sheet is just prepared to exonerate him from responsibility. With respect, he knows, appearance in lower courts by his colleagues instead of the High Court will not be accepted that is why they have created circumstances to fit their case.



The record too bears me out. It was not the first time the counsel for the applicant had absconded court. In fact, since the application number 7/2020 was filed to the date it was dismissed, the counsel for the applicant had not appeared on even a single day. On 27/07/2020 Mr. Mussa Lwila appeared holding brief for Mr. Mathias Budodi who told the court that Mr. Budodi was sick.

Mr. Sanga even attempted to mislead the court when he submitted that, "*It is only on that date the counsel did not appear.*" Again, and with much respect to the counsel for the applicants, that is not borne by the record just as I have indicated above.

The argument by the counsel for the applicant that if the application is granted, the respondent will suffer no prejudice, with great respect to the learned counsel for the applicants, I do not accept the contention. It is trite law that, litigation has to come to an end. Restoring the application that was dismissed will continue to make the respondent hassle for her justice in court without justification, which is not only detrimental but also prejudicial to the respondent.

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The circumstances, this application is found to be wanting in merits. It is accordingly dismissed with costs to the respondent.

It is so ordered.

Dated at Sumbawanga this 19<sup>th</sup> day of July, 2021.



  
**J. F. Nkwabi,**

**JUDGE**

**Court:** Ruling delivered in chambers this 19<sup>th</sup> day of July 2021 in the presence of Mr. Mathias Budodi, learned counsel for the applicants and the presence of the applicants in person, as well as in the presence of the respondent in person.



  
**J.F. Nkwabi,**

**JUDGE**