

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

**MISC LAND APPLICATION NO.140 OF 2021**

**MBARAKA MIRAJI.....1<sup>ST</sup> APPLICANT  
SALAMA MIRAJI.....2<sup>ND</sup> APPLICANT  
MAGNUS M MHICHE.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**OMARY HAMIS UNGAUNGA.....RESPONDENT**

Date of Last Order: 06.07.2021  
Date of Ruling: 23.08.2021

**RULING**

**V.L. MAKANI, J**

The applicant named above is seeking the following orders:

- 1. That this Honourable Court be pleased to set aside its dismissal order in Misc. Land application No.1121 of 2017 dated 24/09/2020 by Hon.V.L. Makani (Judge) and appoint a day for proceeding with the suit.*
- 2. Any other relief/s the Court may deem fit to grant in favour of the applicant.*

The application is made under Section 95 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**) and it is supported by the joint affidavit of the applicants.

The court ordered the application to be argued by way of written submissions. The parties drew and filed their own submissions.

On the merit of this application, the applicants said that failure to appear in Misc. Land Application No.1121 of 2017 was not caused by negligence but circumstances beyond their control. That they had legal representative but latter he withdrew from representing them without any good cause after the matter was dismissed for want of prosecution. They relied on the case of **Felix Tumbo vs. TTCL Limited & Another, Civil Application No.1 Of 1997 (CAT)** (unreported) in which they said that the court observed that sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons which are outside the applicant's power to control influence relating to delay in taking any necessary delay. They said they have sufficient cause because they had no legal representative to defend them in Misc. Land Application No.1121 of 2017, they insisted that they have been trying to pursue their rights in good faith as there were no negligence on their part, but it was due to the reasons beyond their capacity that led the matter to be dismissed. They sought assistance from Article 13 (6) of the Constitution of the United Republic of Tanzania, 1977 as amended

from time to time and added that as they still have interest in the matter they should be afforded the right to be heard. They prayed for the grant of the application.

In reply the respondent said that the applicants had three applications. In Application No. 1121 of 2017 the applicants applied for extension of time for certificate of law to be determined by the Court of Appeal of Tanzania against the decision of this Court in Misc. Land Appeal No.11 of 2017. That the application was dismissed for want of prosecution and resulted to Misc. Application No.352/2020 in which the applicant prayed for extension of time for the order to set aside the dismissal order in Land appeal No.1121 of 2017 delivered on 27/04/2017. He said that the applicants in this application have stated that they are applying for an order to set aside the dismissal order in Land Appeal No.1121 of 2017 while in fact that was not Land Appeal. It was Misc. Land Application No.1121 of 2017. He said that the failures of the applicants are due to their negligence.

On the other hand, the respondent said that Misc. Application No.352 of 2020 was granted and the applicants were required to file their application within 30 days from 22/02/2020 but due to their

negligence the applicants filed this present application out of time and they back dated it. He said he visited the court twice, and on 23/03/2021 he visited the Court to collect the applicants copy only to be told that the applicant had not yet submitted their application. He said that in Misc. Application No.352 of 2020 the applicants applied for setting aside the dismissal order in Appeal No.1121 of 2017 while there is no land appeal between the parties.

He argued further that Misc. Application No.1121 of 2017 was dismissed on 27/04/2020 and that 34 days were enough for securing Legal Aid but the applicants did not do so. He insisted that the applicants have not adduced sufficient reasons for this court to grant their application for setting aside the dismissal order. He pointed out that Article 13 (6) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time should not be interpreted in the interest of only one party but for all the parties. He prayed for this application to be dismissed with costs.

The applicants did not file a rejoinder.

Having gone through affidavits and the submissions by the parties, the main issue for determination is whether the applicants have advanced sufficient reasons for this court to set aside its dismissal order in Misc. Land Application No.1121 of 2017.

It is settled law that an applicant seeking to set aside a dismissal order of the court for want of prosecution must furnish the court with sufficient reasons for non-appearance when the matter is set for hearing (see the case of **Sadru Mangalji vs. Abdul Aziz Lalani & 2 others, Misc. Commercial Application No. 126 of 2016 (HC-Commercial Division, Mwanza** (unreported)). Since failure to file written submissions within the time prescribed by the Court is equivalent to non-appearance, therefore, this court will ascertain whether the applicants have advanced sufficient reasons for their failure to file written submission within time in Misc. Land Application No.1121 of 2017.

The reasons stated by the applicants for filing their submissions out time in Misc. Land Application No.1121 of 2017 is that they are laymen and that they had to seek legal aid from the Advocate who

later withdrew from the matter when the same had already been dismissed.

The records in Misc. Land Application No.1121 of 2017 are very clear that on 14/11/2019 the 1<sup>st</sup> applicant on behalf of other applicants, informed the court that their advocate has withdrawn and that they pray to argue the application by way of written submission. Prayers were granted and the applicants were ordered by the court to file their submission on or before 14/12/2019. However, the applicants filed their submission on 13/01/2020 that is 30 days beyond the court's order and two months from when the applicants informed the court that their advocate had withdrawn from representing them. Basically, the presumption is that when the applicants applied to submit in writing they were ready for the same. Besides, the date for filing their written submission was set in their presence and in case they failed to submit in time they should have at least informed the court and pray for extension of time. Instead, the applicants remained silent and decided to submit the same out of time without leave of the court. As stated, earlier applicants were aware that their advocate had withdrawn two months before, and that meant the 60 days were

that he had no interest to pursue it. Contrary to that, and as I have stated above, the record of this application does not support this allegation as it shows that this application was presented for filing on 19/03/2021 within 30 days granted in Misc. Land Application No.352 of 2020.

Basing on the foregoing there are no sufficient reasons given by the applicant to enable this court to set aside its dismissal order. In that regard, this application lacks merit, and I proceed to dismiss it with costs.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**23/08/2021**

