

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 200 OF 2022**

BETWEEN

ALFRED KINSWAGA APPLICANT

VERSUS

HASSAN NASSORO PUCHALI 1ST RESPONDENT
MFAUME ALLY 2ND RESPONDENT
LAURA PHILI MUSHI 3RD RESPONDENT
SELEMANI UTELELE 4TH RESPONDENT
JOHN MWAKALOBO 5TH RESPONDENT
JOHN MASAHA 6TH RESPONDENT
MWAJUMA SULTANI SUKUZU 7TH RESPONDENT
EMMANUEL JEREMIA BUNDALA 8TH RESPONDENT
JOSEPH MAYANZA 9TH RESPONDENT
WILLIAM STEVEN 10TH RESPONDENT
JOACHIM SWAI 11TH RESPONDENT
RAMADHANI NYUTWA 12TH RESPONDENT
YANGA SONGO 13TH RESPONDENT
GODGREY SENYAGWA 14TH RESPONDENT
NASSORO JUMA 15TH RESPONDENT
RIDHIKI ATHUMANI DIHOMBA 16TH RESPONDENT
KULWA ATHUMANI DIHOMBA 17TH RESPONDENT

Alls.

ISAYA ALLY KONDEKA 18TH RESPONDENT
HASHIM SALEHE 19TH RESPONDENT
ZAWADI MSWAKI 20TH RESPONDENT
MASHIKU SONGO 21ST RESPONDENT
AMINA KISOLO 22ND RESPONDENT

RULING

A. MSAFIRI, J.

On 29/4/2022 the applicant Alred Kinswaga filed this application under the provisions of Order IX Rule 9(1) of the Civil Procedure Code Cap. 33 R.E 2019 (the CPC), praying for the orders that this Honourable Court may be pleased to set aside an order of this Court dated 31/3/2022 dismissing the suit, Land Case No. 47 of 2020 for non-appearance. The application was supported by an affidavit of Mr. Ole Mkulago Yangalai, the learned advocate for the applicant. The respondents were represented by Mr. George Mwalali, learned advocate who also swear a counter affidavit in opposition of the application. However, on 22/9/2022, Mr. Mwalali informed the Court that the respondents are conceding the application and prayed for the leave to withdraw his counter affidavit. The leave was granted, and the counter affidavit was marked withdrawn.

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Having gone through the affidavit of the counsel for the applicant, and the attached documents, the issue is whether there are sufficient grounds advanced by the applicant for his absence on 31/03/2022 when the Land Case No. 47 of 2020 was set for hearing. According to the affidavit, Mr. Mkulago, advocate for the plaintiff stated that on 31/3/2022 when the case was set for hearing, he was summoned to appear in High Court, Corruption and Economic Crime Division at Dar es Salaam, thus he was unable to attend the Land Case No. 47 of 2020. To support his statement, he attached a copy of summons of Economic Case No. 20 of 2021, the Republic vs. Hamad Sheha & Another, at High Court, Corruption and Economic Crimes Division, dated 31/3/2022. This application was also supported by an affidavit of the applicant Alfred Kinswaga. He stated that on 31/3/2022 when the case was set for hearing, he was late for five (5) minutes to arrive at High Court, Land Division whereby he arrived at 12.05 noon while the case was set for 12.00 noon. That, the delay was out of his control because of traffic jam. He averred that, when he arrived at the Court, he waited until 1.00 pm waiting for the case to be called, then when he asked the Court Clerk, she told him that the case was called at 12.00 and that it was dismissed for non-appearance of plaintiff. He submitted that, on the said date, his advocate

Alles

one Mr. Ole Mkulago was appearing in another case before the High Court, Corruption and Economic Crime Division at Dar es Salaam so he was unable to enter appearance.

I find the reasons submitted both by the plaintiff and his advocate Mr. Ole Mkulago to be sufficient. Leniency calls for consideration of these reasons particularly for the plaintiff whose right to be heard stands to be prejudiced if the application will not be granted. It is for these reasons that I allow this application by setting aside my order dismissing the suit dated 31/3/2022. The suit, Land Case No. 47 of 2020 is hereby restored and shall proceed from where it was before 31/3/2022.

Each party shall bear their costs on this application.

Order accordingly.

Dated at Dar es Salaam this 22nd day of September 2021.




A. MSAFIRI
JUDGE
22/9/2022