

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

**MISC. LAND APPLICATION NO.480 OF 2022**  
(Originating from Misc. Land Case Appeal No.20 of 2022, before Hon. Mwenegoha,  
J.)

**SULEMAN SHABAN SIMBA.....APPLICANT**

**VERSUS**

**AGNES OBED MSENKA.....RESPONDENT**

**R U L I N G**

*Date of Last Order: 13.10.2022*

*Date of Ruling: 27.10.2022*

**T. N. MWENEGOHA, J.**

On 1<sup>st</sup> of August 2022, Honourable Mwenegoha, J. dismissed the applicant's case; vide Misc. Land Case Appeal No. 20 of 2022 for want of prosecution. In the case at hand, the applicant wants this court to set aside dismissal order and accordingly restore the said case (Misc. Land Case Appeal No. 20 of 2022).

The application came under Order IX Rule 6(1), Sections 76 and 95 of the Civil Procedure Code, Cap 33 R. E. 2019, accompanied by the affidavit of Susan Peter Mwansele, the then Counsel for the applicant. The application and was disposed by written submissions. Hashim Mziray, learned Advocate appeared for the applicant, while the respondent enjoyed the services of Advocate Mutakyamirwa Philemon.

In his submissions, Mr. Mziray was of the view that, the reasons led to the dismissal of the Misc. Land Case Appeal No.20 of 2022 were not caused by the negligence of the applicant. Rather, arose out of unfortunate events which occurred on the part Advocate Susan Peter Mwansele who was representing the applicant at the time when the case was dismissed for want of prosecution. The said advocate failed to file he written submissions within the scheduled time on the 18<sup>th</sup> July 2022, due to the death of her maternal grandfather one Kandonga Agaton Haule, on the 12<sup>th</sup> of July 2022. For this reason, she had to travel to Njombe to attended the burial service of her deceased grandfather from the 13<sup>th</sup> of July to 19<sup>th</sup> of July 2022. Therefore, Mr. Mziray insisted for the application to be allowed, as the same was dismissed based on the non-appearance of the applicant's advocate not the fault of the applicant.

In reply, the respondent insisted that, this Application should have been brought by Advocate Susan as she is the one who caused the dismissal of the Misc. Land Case Appeal No. 20 of 2022. The same was dismissed upon her failure to file the written submissions as scheduled. Being the person at fault, she is responsible for the restoration of the said case on behalf of her client. That in this case, it is the applicant himself who moved the court instead of the Advocate in question. This is contrary to the rules as stated in **Kepha Huzi versus Elizabeth Kutimwa (2011) TLR at page 198**. That above all the applicant failed to give sufficient reasons warranting the court to allow this application.

Submitting in his rejoinder, the applicant's counsel reiterated his submissions in chief.

Having seen and read carefully the submissions of the learned counsels for their respective parties and also visited the affidavit and counter affidavit in support and against this application, the issue for determination is whether the application has merits or not.

I will start by taking a look of what Order IX Rule 6 (1) of the Civil Procedure Code R. E 2002 say in relation to the instant application. I will reproduce it as follows.

*"Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, but he may apply for an order to set the dismissal aside and, if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or 88 otherwise as it thinks fit and shall appoint a day for proceeding with the suit.*

Based on the above provision, what the applicant is obliged to do to win the courts favor is to give sufficient reasons as to why his application should be allowed.

Now, whether or not the reasons stated by the applicant's counsel are sufficient enough to allow this application is highly debatable. Because what constitutes a sufficient cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case. **[see Oswald Masatu Mwinzarubi versus Tanzania Fish Processors Ltd, Court of Appeal**

**of Tanzania, Civil Application No. 13 of 2010] (Mwanza Registry, unreported).**

In the case at hand it has been argued that, the previous case was dismissed following the failure of the applicant's advocate to file the written submissions within time. In her affidavit supporting this application, the said Advocated deponed that, she was in Njombe at that material time attending the burial ceremony of her late maternal grandfather. She annexed the bus tickets to prove that she travelled to Njombe within the period which she was supposed to file the said submissions.

I would have believed the deponent in her affidavit that she went to Njombe to attend the burial ceremony of her late grandfather if she would have brought sufficient proof that, indeed on that material time her maternal grandfather died. Bus tickets alone, showing that she travelled to Njombe is not sufficient proof. She could have been in Njombe for her private business for instance, and not for the burial services as she claims in her affidavit. Above all, I believe that, the advocate in question still could have reached the court through her fellow learned friends and inform it on her absence due to the reasons so explained, so that the Court could refrain from dismissing the case.

More so, she could have sent the Applicant himself. Her failure to do so and in absence of any proof of the death of her grandfather or even proof of her attendance to the funeral as claimed, I am of the settled view that Advocate Susan was negligent in prosecuting the Misc. Land Case Appeal No. 20 of 2022. Her negligent acts cannot benefit the applicant as they

stand in the same footing as that of any other person, see **Kepha Huzi vs. Elizabeth Kutimwa**, (supra).

For the reasons given herein above, I find the applicant to have provided no sufficient reasons in this court to enable it allow the application at hand.

Eventually, the same is dismissed with costs.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**27/10/2022**