

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

**LAND APPEAL NO. 154 OF 2021**

(Originating from Kinondoni District Land and Housing Tribunal in Land Application No.117 of 2018)

**CONSOLATA ALOYS CYRIL.....APPELLANT**

**VERSUS**

**EFATHA BANK LTD.....1<sup>st</sup> RESPONDENT**

**DEPOSIT INSURANCE BOARD.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 18.07.2022  
Date of Judgment: 25.07.2022

**JUDGMENT**

**V.L. MAKANI, J**

This is an appeal by CONSOLATA ALOYS CYRIL. She is appealing against the decision of the Kinondoni District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 117 of 2018 (Hon. L.R. Rugarabamu, Chairman).

The appellant applied to the Tribunal to set aside the dismissal order entered against her in Land Application No.616 of 2016. The application was dismissed by the Tribunal for lack of good and sufficient reasons. Being dissatisfied with the decision, the appellant preferred this appeal with two grounds of appeal reproduced hereinbelow:

- 1. That, the trial Tribunal erred in law and fact for failure to consider the reasons advanced by the appellant.*
- 2. That, the trial Tribunal erred in law and fact for failure to consider the sick sheet attached to the application.*

The appellant prayed for the appeal to be allowed, the ruling be set aside and the matter to proceed at the Tribunal.

The appeal proceeded by written submissions. Mr. Respicius Ishengoma, Advocate drew and filed submissions on behalf of the appellant; and Mr. Living Raphael, Advocate drew and filed submissions in reply on behalf of the respondents.

In his submission, Mr. Ishengoma gave a brief account of the matter that the applicant filed Land Application No.616 of 2016 and it was ordered that the Deed of Settlement be filed as evidence of arriving at amicable settlement. He said the respondent never filed the said Deed of Settlement to this date. He argued further that when the matter came for hearing on 1<sup>st</sup> March 2018 the advocate for the applicant did not appear as he was in Bukoba to pay last respect to his late aunt one Mastidia Baruti who passed away on 28<sup>th</sup> February, 2018 in Dar es Salaam. That the applicant too could not appear as she was still sick, as a result the application was dismissed for want

of prosecution. That the applicant filed the application to set aside the dismissal order, but it did not succeed.

On the first ground Mr. Ishengoma said that the reasons advanced by the appellant were genuine and the same ought to have been considered by the Tribunal as failure to appear was not caused by negligence on the part of the applicant and her advocate. Mr. Ishengoma went on saying that the Tribunal's decision was based on assumptions which were contrary to natural justice, principles of right to be heard and was detrimental to the appellant. He relied on the case of **Mbeya-Rukwa Auto Parts and Transport Ltd vs George Mwakyoma [2003] TLR 251**

On the second ground, Mr. Ishengoma said that the Tribunal decided that the sick sheet could not be read. That the reason was not focused on legal basis because the Tribunal could have ordered for the original to be presented if that was the case. He said that it is without dispute that the applicant is still sick though her sick sheet is not readable as per the Tribunal. He said that the case belongs to the party and not the advocate and more weight should have been put on the circumstances surrounding the appellant who was and is still sick. He

said that the grant of the application could in no way be prejudicial to the respondent nor would the respondent suffer any irreparable injury. He relied on the case of **Jesse Kimani vs. Mc. Cornel & Another (1966) EA 547**. He prayed for the appeal to be allowed and the ruling of the Tribunal be set aside with costs.

In reply Mr. Raphael gave a brief background of the matter. He argued further that the reasons pointed out by the appellant do not amount to sufficient reasons for restoration of the application. He said the reason by the appellant's Counsel that he travelled to Bukoba for burial of his aunt is not sufficient reason because the matter had been called twice before the occurrence of the death on 12/07/2017 and on 08/11/2017 and neither the advocate nor the appellant entered appearance. He said the application was rightly dismissed for want of prosecution. He added that the reasons given are not sufficient for lack of evidence. That there is no evidence to prove that on 031/03/2018 Counsel for the applicant was in Bukoba for burial of his aunt.

On the second ground Mr. Raphael said that the sick sheet attached to the application cannot be read. He said the name of the holder and

the date and name of the hospital are not legible. He said even the applicant had a duty to prove that she was sick. The Tribunal did not admit the said sick sheet as such the appellant failed to show good and sufficient reasons to set aside the dismissal order. He said it was the duty of the advocate to notify the Tribunal of their absence. He further prayed for the appeal to be dismissed with costs.

The appellant did not file rejoinder submissions.

Having considered the submissions from the parties, the main issue for consideration is whether the appeal at hand has merit. Powers to set aside the dismissal order are in the discretion of the court as found in Order IX Rule 14(1) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). However, the law requires the applicant to furnish sufficient reasons to enable the court to exercise the said discretionary powers. This was stated in the case of **Vigu Trading Company Limited vs. Sinotrans Tanzania Co. Ltd, Misc. Civil Application No.209 of 2021 (HC-DSM)** (unreported) when referring the case of **Mwidini Hassani Shela & 2 Others vs. Asinawi Makutika and 4 Others, Land Appeal No.04 of 2019 (HC)** (unreported) wherein the court stated:

*"It is trite law that powers to set aside dismissal order are in the discretion of the court, however the applicant should furnish sufficient reasons to enable the court to exercise its discretionary power".*

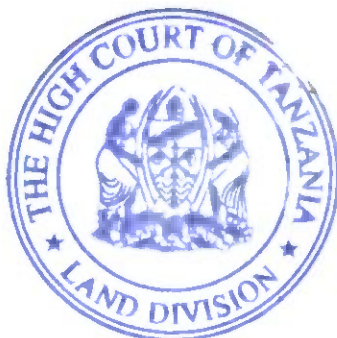
The two grounds of appeal can be consolidated into one that the Tribunal did not consider the evidence by the appellant which resulted to failure to appear and prosecute his application. The reasons that were advanced were: First, his advocate Mr. Ishengoma was in Bukoba on the hearing date (1/3/2018) for burial ceremony of his aunt. Secondly, the applicant was also sick and she could not enter appearance. What was the evidence supplied by the applicant? Regarding the claim by Mr. Ishengoma that he was in Bukoba, there was no evidence apart from his word of mouth. For instance, there was no copy of a ticket on record to show that indeed the learned Advocate travelled to Bukoba on the alleged dates, or any other thing to convince this court that indeed he was out of town. If at all he was not in town, practice is he would ask his colleagues to hold his brief in court and explain reasons for their absence. But it is apparent from the record that the learned advocate did not make such effort so as to ensure the court is informed of his absence and that of his client.



Proof of absence on the part of the applicant is **Annexure "BIN-1"** allegedly the medical certificate or sick sheet as she called it. In all practical sense the said sick sheet is faint and not legible. The particulars of the patient, dates and the hospital allegedly attended by the appellant is not readable. Admittedly, in such a situation and with the kind of evidence, it was difficult for the Tribunal to ascertain and satisfy itself of the applicant's claims. In short, there were no sufficient reasons that were adduced by the applicant to warrant the setting aside of the dismissal order by the Tribunal.

In the result I find no fault in the decision of the Tribunal. Subsequently, this appeal lacks merit, and it is hereby dismissed with costs.

It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**25/07/2022**