

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

LAND CASE NO. 304 OF 2022

CARITAS KOGHA MACHUPA.....1ST PLAINTIFF

SPEEDPESA FINANCE LIMITED.....2ND PLAINTIFF

VERSUS

PUDENSIANA MICHAEL MRUMA.....1ST DEFENDANT

JOHN WAMBURA CHARLES.....2ND DEFENDANT

SCHOLASTICA ROBERT KITIMBO.....3RD DEFENDANT

RULING

Date of Last Order: 06.11.2023

Date of Judgment: 20.11.2023

T.N. MWENEGOHA, J.

The plaintiffs above named, instituted this suit jointly against the defendants. They claim among others, for a declaration that, a suit property, located at Plot No. 452, Block B, Sinza Area, within Ubungo District and Dar es Salaam Region, with a Certificate of Title No. 26839, belongs to the 2nd plaintiff and the 1st plaintiff being a holder of 50% of the company, has a vested interest to the said property, which is mortgaged to the 1st defendant.

The defendants were served with the plaint and presented their Written Statement of defence.

On the 29th August, 2023, the 1st Pre-trial Conference was conducted as required in law, after the parties completed the filling of their pleadings. Thereafter, the matter was referred for Mediation, before Hon. Bahati. On the 25th October, 2023, the Mediation Judge remitted the case file to the trial Judge, stating that, Mediation could not be conducted due to non-appearance of the plaintiff. That, it is only his Advocate who has been appearing, contrary to **Order VIII Rule 29 of the Civil Procedure Code, Cap 33 R. E 2019**. On that account, the parties were ordered to address this Court following the non- appearance of the plaintiff as noted in the Order of the Mediation Judge. Parties complied and filled their written submissions as scheduled.

Counsel for the 1st plaintiff, Mr. Nyangi Owino, submitted that, the non-appearance of the plaintiff is justifiable. That he is a civil servant, working as a teacher at Kasese Secondary School, in Mwanza Region, and that constitutes a sufficient reason for his non-appearance. That, he made three unsuccessful attempts to attend the mediation session through a video conference. The attempts were facilitated by Ms. Happy Bakari and Hellen Mallya, both being clerks at the High Court Mediation Center. Therefore, the 1st plaintiff neither absconded the session nor disregarded it on purpose. Hence, he should not be treated as such. That, above all, throughout, when the 1st plaintiff was not physical present before the Mediation Judge, his advocate was there, as required under **Order VIII Rule 27 (1) of the Civil Procedure Code, Cap 33 R.E 2019**. To cement his arguments, he cited the case of **Dominic Kitego Kifigo (as Administrator of the Estate of the late Simon Joseph) versus Sadic Msangi & Another, Misc. Land Application No. 600 of 2022, High Court of Tanzania, Land Division at Dar es Salaam**

(unreported). His arguments were supported by that of the counsel for the 2nd defendant, Advocate Caroline Mumba.

On the other hand, Mr. Issa Mrindoko, counsel for the 1st defendant, insisted that, the plaintiff has failed to show a good cause for his non appearance when the case was scheduled for Mediation. Therefore, the case at hand should be dismissed. That, the whole story given in the submissions by the counsel for the 1st plaintiff of trying to join the Mediation sessions via a link is made up. There is no sworn affidavit from the mentioned Court clerks to prove if what the counsel for the 1st plaintiff is saying is true. It is without doubt that, it has become impracticable to conduct Mediation because of the plaintiff's failure to appear for the same, hence the case should invoke the provisions **of Order VIII Rule 29 (a) of the Civil Procedure Code, Cap 33 R.E 2019** and dismiss it as stated in **M/S Cide Company versus Tanzania Forest Services (TFS) Agency & Another, Land Case No. 65 of 2015, High Court of Tanzania, at Dar es Salaam, (unreported)**.

In rejoinder, the counsel for the 1st defendant, reitarted his submissions in chief.

Having heard the submissions of the counsels for the parties, the issue worth of determination at this point, is whether the plaintiff has given this Court any sufficient reasons for his non-appearance, when this case was scheduled for Mediation.

Indeed, under **Order VIII Rule 29 (a) of the Civil Procedure Code, Cap 33 R.E 2019**, the Court has a discretion to dismiss the case, when

the plaintiff fails to appear for Mediation. For quick reference, let me reproduce the said provision as follows; -

"Where it is not practicable to conduct a scheduled mediation session because a party fails without good cause to attend within the time appointed for the commencement of the session, the mediator shall remit the file to the trial judge or magistrate who may-

(a) dismiss the suit, if the non complying party is a plaintiff, or strike out the defence, if the non complying party is a defendant."


In the instant case, I have read the proceedings and the Order by the Mediation Judge, dated 25th October, 2023. In the said records, there is not any reason being given by the 1st plaintiff for his non-appearance before the Mediation Judge. This shows that, his absence is not excusable as argued by Mr. Mrindoko. Consequently, there is nothing that this Court can rely so as to rule in favour of the plaintiff. Hence, a dismissal order is inevitable under these circumstances.

To be precise, and with all due respect to Mr. Awino, counsel for the 1st plaintiff, I find the reasons given for no-appearance his client at the mediation session to be unfounded. The same could have been constituting a good cause, if they were at least included or reflected in the mediation proceedings. Otherwise, in my opinion, giving such reasons at this stage as given in the submissions, without evidence and without being reflected in the mediation proceedings tendered to this Court makes such arguments weak and nothing other than an afterthought.

I have further noted that even the 2nd plaintiff never attended the Mediation Sessions. This solidifies the justification for the dismissal of this case, as stated in **M/S Cide Company versus Tanzania Forest Services (TFS) Agency & Another, (supra)**.

Therefore, for the reasons I have wondered to give herein above, I dismiss this case for want of prosecution. No order as to costs.





T.N. Mwenegoha.

Judge

20/11/2023