

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 27637 OF 2023**

*(Originated from the Order of High Court of the United Republic of Tanzania, Land Division in Misc. Land Application No. 568/2023 delivered on 16<sup>th</sup> November, 2023 by Hon. I. Arufani, J.)*

**TABITHA MGANGA ..... APPLICANT**

**VERSUS**

**ELIZABETH MASHAFI ..... RESPONDENT**

*01/03/2024 & 14/03/2024*

**RULING**

**A. MSAFIRI, J**

This is an application to set aside the dismissal order of this court in Misc. Land Application No. 568 of 2023, which was entered on 16<sup>th</sup> November, 2023.

The application was made by way of chamber summons under Order XLIII Rule 2, Order IX Rule 3 & 6(1) and Section 95 of the Civil Procedure Code, Cap 33 [R.E. 2019]. It was supported with an affidavit deposed by Tabitha Mganga, the applicant.

*Atts.*

The respondent did not file her counter affidavit and the court was informed by the applicant that, the respondent was served by refused to receive the summons. After this court was satisfied that the respondent was dully served with summons and refused, the matter was scheduled for hearing on 1<sup>st</sup> March 2024. On that date the respondent appeared in person but since she has not filed her counter affidavit, her only chance was to be heard on points of law only. The appellant was also present in person.

On her submission, the applicant adopted her affidavit and further submitted that during the proceedings of Application Case No. 568/2023, she failed to submit her submission in chief within the time ordered by the court which was to be filed by 14<sup>th</sup> November, 2023 because the person who was helping her to prepare the submissions, had travelled to Morogoro for studies.

She further stated that she forgot the date within which the matter was scheduled, and that this was because she did not write anywhere as she had no paper or pen when she attended the court. That when she went to court on 17<sup>th</sup> November, 2023 to inquire on the matter, she was informed by the Court Clerk one Deograsiana Mhagama that her case had been dismissed for want of prosecution.

A handwritten signature in blue ink, appearing to be 'Alls' or similar, is written over the end of the text.

She insisted that her absence was due to the unavailability of the person helping her to draw the submission in chief. She prayed that the dismissal order be set aside and the court set the date for hearing of the application on merit.

On reply, the respondent acknowledged to have received the summons, but she said that she did not file her counter affidavit but she contests this application because the applicant has no any cause of action over the respondent.

On rejoinder, the applicant reiterated what was submitted in chief and further stated that the respondent has refused to receive the summons even in Application No. 568 of 2023.

The issue for determination is whether the applicant has advanced sufficient good cause for this court to set aside its dismissal order.

The applicant was also an applicant in Misc. Land Application No 568 of 2023 which was before Hon. Arufani, J. The application was ordered to be heard by way of written submissions and the applicant was required to file her written submission in chief by 14<sup>th</sup> November, 2023. The matter was set for 16<sup>th</sup> November, 2023 before the Court for necessary orders but the applicant was absent without any notice. Worse, the applicant had not filed her written submission in chief. Due to the fact

*Alle*

that the applicant had failed to file her written submission in chief within the scheduled time, the Court dismissed the application for want of prosecution.

Having gone through the affidavit of the applicant, she has advanced two reasons; first, that the person who was assisting her to write the submissions had travelled to Morogoro to attend his studies and she failed to get another person who could assist her. The second reason is that at the time the Court was issuing a scheduling order, she had no pen or paper to write the same as she was a layperson, hence she made an error in knowing the exact date when the case was set for mention. To sum up, I find these reasons to be shallow and unbelievable. Not having a pen or a piece of paper in court have nothing to do with being a layman. In addition, the applicant could have entered appearance on the date the matter was set for mention and seek leave for the extension time to file her written submission.

It is trite law that one's failure to file written submissions on time when the matter is ordered to be heard in that mode is tantamount to one's failure to prosecute his/her case. (See the cases of **Monica d/o Dickson vs Hussein J. Wasuha (Kwa niaba ya Chama cha Wafanyabiashara)**, P. C Civil Appeal No. 4 of 2019 HC at Mbeya Registry *Alle.*

(Unreported) and **Simon Haule & 3 others vs Explasia Gaitano Ngasoma**, Land Appeal Case No. 110 of 2020, HC Land Division (Unreported). The applicant have failed to advance good and reasonable cause for her failure to file the written submission in chief as per the order of the Court.

Consequently, I find this application with no merit and I dismiss it.

No order as to costs.

It is so ordered.



  
**A. MSAFIRI**  
**JUDGE**

**14/03/2024**