

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

MISC. LAND APPLICATION NO. 762 OF 2023
(Arising from Land Case No. 61 of 2023, Land Division)

CLODWIG M. MTWEVE.....APPLICANT

VERSUS

BENNO JOHN CHELELE.....RESPONDENT

RULING

9/02/2023 to 27/03/2024

E.B. LUVANDA, J

The Applicant above named is seeking to set aside the dismissal order of this Court dated 16/10/2023, in the above captioned matter.

In the affidavit in support, the learned Counsel for Applicant asserted to have been prevented to attend for reason of ailment on 1/10/2023 as per medical report annexure LH2 and thereafter he was bedridden at Mwananyamala Referral Hospital from 8th to 12th October, 2023, as per medical report annexure LH3.

The Respondent countered on the explanation that the learned Counsel did not mention disease for which he was diagnosed, and that admission or

discharge form are missing, neither attached medical chit which indicate the plan of medication administered. He asserted that the matter was for hearing, arguing the Plaintiff was also absent without any reason.

Mr. Edger Florence Nditi learned Counsel for Applicant reiterated to have failed to appear due to sickness. He submitted that sickness can be considered a good cause to grant the order sought, citing **Bilila Lodge Investment Limited t/a Four Safari Lodge Serenget vs Okuli Kinabo**, Misc. Labour Application No. 60 of 2022.

Mr. Rajabu Mrindoko learned Counsel for Respondent, in reply, submitted that he doubts if the medical document were procured by the advocate Edger Nditi before 16/10/2023, for reason that if at all the attached medical report and chit were available, the advocate who hold his brief could have it and used to adjourn the matter. He submitted that there is likely hood that the medical documents were concocted for purpose of this application for restoration. He submitted that the sickness of advocate Edger Nditi will not serve any purpose in setting aside the order in absence of explanation of the Applicant (Plaintiff) for non-appearance on 16/10/2023 when the matter came for hearing, arguing the matter was dismissed because of non appearance of the Applicant who was expected to be present to adduce

evidence. He submitted that there is no reason for non appearance of the Applicant on 16/10/2023.

On rejoinder, the learned Counsel for the Applicant submitted that the Applicant have adduced good cause for his non appearance as it has been explained in the submission in chief that the Applicant Counsel was sick as per attached medical report. Regarding non appearance of the Applicant was due to mismatch of information between the Plaintiff's Counsel and the Defendant's Counsel so that he could not procure the presence of the Plaintiff in person.

I have carefully considered the reason for non appearance of the learned Counsel when the matter was called for hearing. I am convinced that the reason of ailment was well grounded along evidence from accredited medical facility Mwananyamala Referral Hospital, a medical report certified under the hand of Dr. Emmanuel John for the Medical Officer In-charge. Any doubt ought to have cleared with the facility under which the report was purported to have been issued.

- In the broad interest of justice, I allow this application and set aside the dismissal order dated 16/10/2023, to pave way for the Applicant to be heard on the merit of his docket.

The Application is granted. No order for costs.



E. B. LUVANDA
JUDGE
27/03/2024

Ruling delivered in the presence of Mr. Edger Florence Nditi learned Counsel for Applicant, Ms. Juliana Mumbuli learned Counsel holding brief for Mr. Rajabu Mrindoko learned Counsel for Respondent.



E. B. LUVANDA
JUDGE
27/03/2024