

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPLICATION NO. 18 OF 2021

(Originating from Land Appeal No. 20 of 2020 of the High Court of Tanzania at
Mtwara)

GASPAIR IBRAHIM MSESE..... APPELLANT

VERSUS

TANZANIA POSTAL BANK LINDI BRANCH 1ST RESPONDENT

MCHINGA AUCTION MALT AGENCY CO 2ND RESPONDENT

ALLY HASSAN MBELA 3RD RESPONDENT

Date of Last Order: 16/11/2021

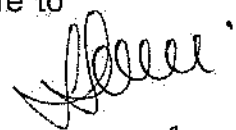
Date of Judgment : 24/11/2021

RULING

Muruke, J.

Gaspair Ibrahim Mseese, filed an application for restoration of land appeal number 20 of 2020, dismissed 10th June 2021. Application is supported by an affidavit sworn by himself. Respondents filed counter affidavit sworn by Mwanja Kilaja first respondent's principal officer. Reason for restoration are started at paragraph 4 and 5 applicant affidavit that reads.

4. That unfortunately on 10th June 2021 where the case was fixed for mention I did not attend to the court because I was sick and I was hospitalized in kwa mtoro Health centre since 08th June 2021 and discharged after 3 days. (a copy of medical report attached here to and marked as annexure "A" 1 up on leave of this application)



5. That the defaulted appearance which led for dismissal of the appeal I was not done intentionally but the to hospitalize by the Applicant as I have stated here in above.

In replay to the content of paragraph 4 and 5 of applicant affidavit respondents avered at paragraph 4 and 5 that.

4. that, the contents of paragraph 3, 4, 5 and 6 of the Applicants Affidavit are strongly disputed and the Applicant is put into a strict proof thereof. The 1st and 2nd Respondent avers that Applicant throughout enjoyed service of an advocate who appeared on his behalf and he never attended on his own. His sickness on the date of hearing had nothing to do with attendance of the Applicants advocate.

5. Further to paragraph 4 herein above, the 1st and 2nd Respondent avers that the Applicant has miserably failed to show how the alleged sickness caused failure to attend himself or his advocate or even how it caused failure of even information from himself or his advocate failed to be furnished to court.

On the date set for hearing, Emmanuel Ngongi advocate represented applicant, while respondents were represented by Mr. Epaphio Mwego advocate, and an in house lawyer of the first respondent. Both parties submitted along lines their affidavit for and against. In general applicant counsel insisted that sickness prevented applicant from appearing on the date of hearing. Respondent counsel argued that, applicant was being represented, all the time. It is advocate who was to appear. Applicant sickness was not reason for his advocate none appearing.

Indeed, thought proceedings, from when case was filed, it was advocate who has been appearing to represent appellant in Land appeal number


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20 of 2020 before W. P. Dyansobera, J. To be precise it is advocate Ruta bilakwata who has been appearing to represent applicant. I do not see how applicant sickness would prevented his advocate to appear in court, as correctly submitted by advocate Epathro Mwego, respondent's counsel.

It is true that sickness can be good ground for non appearance, but it is not enough just to say applicant was sick. Applicant counsel, should have gone further and tell this court how applicant sickness has prevented his counsel Mr. Ruta Bilakwata from appearing on the date set by the court on his presence. It should be remembered that court orders must be respected, adhered to and complied with. None compliance of court orders not only is disrespect, but create chaos on entire administration of justice. That cannot be left to continue. Whoever knocks the doors of any court must be ready to prosecute otherwise, one has to face the consequence of none appearance.

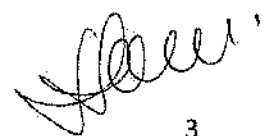
From the records and argument by applicant counsel, there is no sufficient cause shown for this court to restore dismissed appeal. Thus, application lacks merits, thus refused, with costs.

Z. G. Muruke

Judge

24/11/2021

Ruling delivered in the presence of Emmanuel Ngongi for the applicant, and Emmanuel Banza, 1st respondent Manager, Mtwara Branch.





Z. G. Muruke

Z. G. Muruke

Judge

24/11/2021