

TANZANIA / JUDGMENT

ali mohamed ali 2 other vs lilian steven kimaro 2023 tzhclandd 17273 12 december 2023

COURT
TANZLIIDECIDED
12 December 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND CASE APPLICATION NO. 776 OF 2023 {Arising from the Ex parte Judgment
in Land Case No. 17 of 2019 delivered on 29/03/2021) ALI MOHAMED ALL., 1ST APPLICANT
SOPHIA SOMO OMAR, 2nd APPLICANT MAMY ABUBAKAR
FADHIL 3rd APPLICANT VERSUS LILIAN STEVEN KIMARO
RESPONDENT

RULING

12h December 2023 L. HEMEDr J. This is an application to set aside ex parte judgment. It is made under section 95 and Order IX Rule 13(1) of the Civil Procedure Code, [Cap 33 RE 2019]. In the instant application, ALI MOHAMED ALI, SOPHIA SOMO OMAR and MAMY ABUBAKAR FADHIL seek to set aside an ex- i parte judgment in Land Case No. 17 of 2019 delivered on 29th March 2021, Hon. Dr. Z. Mango, J. The application has been supported by the joint affidavit of the applicants. In the said affidavit, it has been asserted that the applicants were not aware of Land Case No. 17 of 2019 until on 23rd August 2023 when they were served with the 14 days' notice by the court broker, Sensitive Auction Mart. According to the applicants, the said notice was attached with a copy of Execution No.95 of 2022. The applicants applied for extension of time thorough Misc. Land Application No.587 of 2023 whose Ruling was delivered on 08 November 2023, Hon. Mwaipopo, J. In the said decision, application for extension of time was granted where they were given 14 days to lodge their application to set aside the ex parte judgment. In granting the said application for extension of time, this court, Hon. Mwaipopo, J. observed as follows at page 16 of the Ruling- "Consequently, I am of the settled view that the applicants have assigned good cause that prevented them to enter appearance. In other 2 words, there is an arguable defence which justifies this court to exercise its discretionary power to grant this application to set aside the ex parte judgment..." (Emphasis added) Following the above observation of the court, the learned counsel for the respondent, Mr. Man Kitae, opted not to challenge the application to set aside the exparte judgment. He showed the position expressly when he appeared before this court on the 12th December 2023 where he prayed to concede to

the application. He also prayed to be dispensed from the costs of the application. Of course, on the said date, the advocate who appeared to represent the applicants, Mr. Francis Kajilu, could not object the prayer made by the counsel for the Respondent. I have also managed to go through the Ruling of this court in respect of Misc. Land Application No.587 of 2023, delivered on 8th November 2023 by my sister at the bench, Hon. Mwaipopo, J. In fact, having observed it, I found that, technically, the court had granted the application to set aside the exparte judgment in the said application for extension of time. 3 Principally, the court is bound by what was observed in Misc. Land Application No.587 of 2023. In the circumstance, it was inevitable for the respondent to concede to the instant application. From the foregoing, I have no option other than to grant the application. Ex parte Judgment in Land Case No. 17 of 2019 is hereby set aside. The said Land Case to be heard inter parties. In the circumstance of this case, each party to bear its own costs. It is so ordered. DATED at DAR ES SALAAM this 12th December 2023. JUDGE 4

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