

TANZANIA / JUDGMENT

beatus malima vs dremmanuel malangalila 2020 tzhclandd 155 26 may 2020

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26 May 2020

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND APPLICATION No. 578 of 2019 (Arising from Land Case No. 408 of 2016)
BEATUS MALIMA..... APPLICANT VERSUS DR. EMMANUEL
MALANGALILA..... 1st RESPONDENT KINONDONI MUNICIPAL COUNCIL..... 2nd
RESPONDENT Date of Last Order: 12.03.2020 Date of Ruling: 26.05.2020

RULING

V.L. MAKANI. J This application is by BEATUS MALIMA. The application is under Order VIII Rule 20(2) of the Civil Procedure Code as amended by the Civil Procedure Code (Amendment of the First Schedule) Rules 2019, (GN No. 381 of 2019) and section 95 the Civil Procedure Code, CAP 33 R.E 2002 (the CPC). The application is supported by an Affidavit of Denice S. Tumaini, Advocate for the applicant who is seeking to set aside the order of this court 02/10/2019 striking out the defence of the 1st defendant in Land Case No. 408/2016. When the application was called for hearing, Denice Tumaini, Advocate, appeared for the applicant and the 1st Respondent enjoyed the legal services of Samuel Nyari, learned Counsel and the 2nd Respondent didn't enter appearance in respect of this application. Submitting in support of the application, Mr. Tumaini prayed for his affidavit to be adopted and stated that, the major reason for his non- appearance on the material date leading to the impugned order was that he was late and thus he was unable to feature on the Coram of the trial Judge. However, he walked in the Judge's Chambers while the said case was still going on. His delayed appearance was not deliberate but was caused by a traffic jam caused by a motorcade of a top government official. Above all before that incident, his past record on appearances for the case is clean and he has been representing his client diligently. Therefore, he prayed for his application to be allowed for the interest of justice to all parties. In reply, Mr. Nyari for the 1st respondent insisted that, the reasons adduced by the counsel for the applicant for his failure to appear or delay do not suffice to be good reasons warranting the impugned order to be set aside. Government officials are on the roads and they cause traffic jam every day. He said it is a normal practice and cannot be an excuse but it signifies negligence on part of the applicant's Counsel. Mr. Nyari admitted however that the applicant's counsel walked in

the Chambers on the material date and asked him about the status of the case in a very low tone and he told him that the Judge was writing an order. Therefore, he had no ill motive against him. 2 In his rejoinder, Mr. Tumaini reiterated his submissions in chief and added that, it is a known thing that when high ranked government officials are passing, roads are usually blocked to allow swift movement of the motorcade. When this happens, no one can intervene and that is what happened on that day. He and other road users were stopped, and they could not move. I have considered the arguments of both parties through their respective Counsel as well as the averments in the affidavit and counter affidavit adopted in line with the submissions. It is not disputed that the applicant's Counsel on the material date appeared in court but was late. The issue is the reason that caused him to be late. The court has to satisfy itself if the said reason is sufficient to enable this court set aside the impugned order of 02/10/2019, which struck out the defence of the 1st defendant in Land Case No. 408 of 2016. The reason given by the applicant is that he was stuck in traffic following a road block imposed against users on that particular date, to allow the motorcade of a high ranked government official that was passing through the said road. I have duly given consideration to the reason given by Mr. Tumaini and I am of the view that it is sufficient. His presence in the Judges Chambers even though he was late, signified his readiness to discharge his obligations for his client on the said date. Mr. Nyari admitted in his submissions that, it is true the applicant's Counsel came in the Chambers while the trial judge was preparing the 3 impugned ruling, and this means that he was in court but slightly late. It is also evident from the record that the attendance of the applicant's Counsel is good. I am therefore convinced that denial of this application is as good as denying the 1st defendant his right to be heard. By doing so I will be punishing the 1st defendant for the unintentional mistake done by his Advocate. In the final result, the application is granted. The order for striking out the Written Statement of Defence of the 1st defendant in Land Case No. 408 of 2016 is hereby set aside. The suit is to proceed as appropriate. Costs shall be in the cause. It is so ordered. V.L MAKANI JUDGE I] 26/05/2020 4

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