

TANZANIA / JUDGMENT

matilda matgana vs peter kiula 3 others

2022 tzhclandd 12466 20 october 2022

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20 October 2022

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM MISC. LAND
APPLICATION NO. 601 OF 2021 MATILDA MATIGANA.....
APPLICANT VERSUS PETER KIULA.....
1stRESPONDEN BROWN
MWAKALEBELA.....2ndRESPONDENT PAULO KUBE
MASANJA 3rd RESPONDENT GABRIEL BENARD
4th RESPONDENT

RULING

Date of the last Order: 20.10.2022 Date of Ruling: 20.10.2022 A.Z. MGEYEKWA, J This is an application for setting aside the dismissal order made by this court made on 30th August, 2022 in Misc. Land Application No. 320 of

2021. The application is brought under Order IX Rule 3 of the Civil Procedure Code Cap 33 [R.E. 2019]. The reasons for the prayers are set i set out in the affidavit that supports the application. The main reason is the confusion that arose on the date of the hearing where the counsel for the applicant did not appear is based on the confusion of the date of hearing the application. The application is supported by an affidavit of Mohamed Manyanga, counsel for the applicant, and contested by a counter affidavit of Mr. Thomas Mathias, the 1st and 3rd respondent's counsel. When the matter came up for orders on 20th October, 2022, the applicant had the legal service of Mr. Mohamed Manyanga and the 1st abd 3rd respondents enlisted the legal service of Mr. Kelvin, learned counsel. In his submission, Mr. Mohamed urged this Court to set aside the dismissal order in Misc. Land Application No. 320 of 2022 for extension of time to file leave to appeal. He submitted that the main reason for their absence on 15th August, 2022; is because they received judiciary message through mobile 0714 494328 that hearing was scheduled for hearing on 06th September, 2022 at 09:00. The counsel received another message stated that hearing is set on 30th September, 2022 at 09:00 hours, they made a follow up and we were informed that the case was dismissed for nonappearance. In conclusion, the counsel for the applicant urged this Court to grant our application and restore the application with cost. 2 The counsel for the 1st respondent urged this Court to adopt his counter affidavit and form part of his

submission. He argued that on 15th August, 2022 both parties appeared in Court and Mohamed prayed to file a supplementary affidavit. He went on to submit that the Court scheduled the hearing of the application, the 1st and 3rd respondent's counsel appeared but the applicant's counsel did not appear and they did not state any good cause. Mr. Kelvin went on to submit that then the matter was set for hearing on 30th August, 2022 whereas the applicant and his counsel defaulted thus the Court dismissed the application. The counsel valiantly contended that it was the applicant's negligence for failure to make a follow up of their own case. He stressed that the applicant have failed to demonstrate sufficient reasons. Ending, he urged this Court to dismiss the application. In his rejoinder, the applicant's counsel reiterated his submission in chief. For the interest of justice, he urged this court to grant the applicant's application. I have considered the counsels' arguments for and against the application. The issue which is the bone of contention in this Application is whether the applicant has adduced sufficient reasons to move this court to restore the Misc. Land Application No. 320 of 2021. It is evident from the affidavit supporting this application that the applicant's failure to appear when the matter was called for hearing is because of confusion that arose on the 3 date of the hearing. Reading the electronics messages which were printed from the computer, it show clearly that the message are from this Court. Unfortunately, the message conveyed when the matter had been dismissed on 30th August, 2022 were misleading the applicant and her counsel. It is my considered view that the confusion that ensued on the day constitute a sufficient reason for restoration of the matter. Consequently, the prayer in the application is granted. The Misc. Land Application No. 320 of 2021 be restored and continue with hearing were it ended. Order accordingly. DATED at Dar Es Salaam this 20th October, 2022.

M.Z.MGEYEKWA JUDGE 20.10.2022 Ruling deliverrecParr, 20th October, 2022 via video conferencing whereas Mr. Mohamed Menyanga, learned counsel for the applicant and Mr. Kelvin, counsel for the 1st and 3rd respondents were remotely present. A.Z.MGEYEKWA JUDGE 20.10.2022 4

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