

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(KIGOMA DISTRICT REGISTRY)**

**AT KIGOMA**

**LAND DIVISION**

**(APPELLATE JURISDICTION)**

**MISC. LAND APPLICATION NO 6 OF 2020**

*(Arising from Misc. Land Appeal Case No. 2 of 2019 of the High Court of Tanzania at Kigoma,  
Original From the Decision of Bugaga Ward Tribunal in Land Dispute No. 115 /2012)*

**MATIAS LUHANA .....APPLICANT**

**VERSUS**

**MPIZI MPUZU.....RESPONDENT**

**R U L I N G**

26/05/2020 & 28/05/2020

**I.C. MUGETA, J.**

The applicant's appeal was dismissed for failure to prosecute it as no service was effected to the respondent. In terms of Order XXXIX rule 19 of the CPC he moves this court to restore the appeal. The reason upon which the application is pegged is at paragraph 4 of the supporting affidavit. It states:-

*"That failure to serve the respondent was beyond the applicant's control as he frequently obtained and collected relevant summonses from the High Court registry and frequently handed over the same to*

*the responsible District Court process servers, paid them relevant fees but the officials frequently assigns one reason or another for failure to execute their obligations”.*

This is a serious allegation which, however, I have find to be truthful. On 24/4/2020 when this case come for hearing, the respondent had not been served. Nevertheless, there was in court file an affidavit of service of the Ward Executive Officer of Nyumbigwa with a note:-

*"The said Mupizi Mpuzu is very serious sick in the sense that he is un (sic) so he has failed to sign the summons”.*

Besides this note the affidavit is silent whether service was effected. This is one reason among others of similar nature which bored my brother Judge and decided to dismiss the appeal. In his decision, my learned brother noted that the same person who was too sick to sign the summons had travelled away to his **"shambas"** when another attempt to serve him was made later and no efforts were made to trace him. One of the returned summons at appeal so informed. For months, nothing had been stated about delivery of the summons. I noticed same trend had started in this application. Process servers report on health of the respondent instead of whether summons has been delivered. Therefore, I had to pay much more attention on the issue of service.

On the said date, I ordered service to be effected through the Kasulu District Court process servers. The Depute Registrar forwarded the summons to that court though letter Ref. No. Misc. Land Appeal No. 6/2020 dated 23/4/2020. On 26/5/2020 when the case come for hearing the return of

service had been filed. The report of service through an affidavit sworn by Issa Yahya Mhanga shows that the respondent was served on 7/5/2020. Yet, on the summons it is endorsed:-

*"applicant ni mgonjwa wa muda mrefu sasa"*

I keep wondering why this message is recurrent. Service of summons is governed by order V of the CPC. Rule 16 of the Order provides:-

*"Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or any other person on his behalf, he shall require the person to whom the copy is so delivered to sign an acknowledgment of service endorsed on the original summons".*

It is unknown how the process servers determined the health status and the length of the respondent's illness. Health issues is a jurisdiction of medical doctors not court process servers. I have read the relevant provisions of the CPC I have failed to find any provision where the process server is obligated to state on the health condition of the recipient of the summons. His role is to deliver the summons and report back.

Back to our application, at least this time the respondent was served. Despite the service, he never entered appearance hence this exparte decision.

As I have stated the appeal was dismissed for want of proper service. From the record and what I have endeavoured to demonstrate hereinabove, the applicant's complaint that he made all the efforts to effect service but process

servers were dishonest is justified. I find merits in the application which I hereby grant. The appeal by the applicant in Misc. Land Case Appeal No. 2/2019 is hereby re-admitted under Order XXXIX rule 19 of the CPC. Through this judgment I call upon all Deputy Registrars, Resident Magistrate and District Resident Magistrates incharge in Kigoma region to inform all court process servers that their role is limited to delivery of summons and to report back to the court about the service. Nothing less, nothing more.

 *Mugeta*  
**I.C. Mugeta**  
**Judge**  
**28/5/2020**

**Court:** Delivered in chambers before the applicant and in the absence of the respondent.

**Sgd: I.C. Mugeta**

**Judge**

**28/5/2020**