

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 49 OF 2021

(Arising from Commercial Case No. 15 of 2021

YUSUPH HAMISI KITUMBO.....APPLICANT

VERSUS

MAENDELEO BANK PLC.....RESPONDENT

Last order: 19/7/2021

date of Ruling: 12/8/2021

RULING

NANGELA, J:

This is an application brought under a Certificate Urgency filed in this Court on 20th August, 2021. The application is brought under Order XXXV Rule 2 (i) and 3 (i) (b) of the Civil Procedure Code, Cap. 33, R.E. 2019 and section 25 (a) and (b) of the Mortgage Financing (Special Provisions) Act, No. 17 of 2008.

The Applicant is seeking for order, that

- i). This court be pleased to grant unconditional leave to the applicant herein to defend against the summary suit.*

ii). Cost of this application to follow event.

iii). Any other relief(s) this honourable court may deem fit and just to grant.

On the day of 19th July 2021, this matter was called for mention before the Hon. Mushi, the Deputy Registrar and he scheduled it for hearing on this 12th August, 2021. On the material date, the Applicant was represented by Ms. Fatuma Kazimoto, learned Advocate. The Respondent was represented by Mr. Emmanuel Ally and Silas Nsajigwa, learned Advocates.

The record of this Court shows that, all parties were made aware of the date and time set by this court for the hearing of this application. However, on the 12th day of August 2021, the date when the application was set for hearing, the learned counsel for the Applicant did not show up. The Respondent was represented by Mr. Emmanuel Ally, Advocate . Mr. Ally seized the moments and prayed that the application be dismissed for want of prosecution, taking into account that on the 19th day of July 2021 the learned Advocate for the Applicant was well aware of the date of hearing but did not show up to prosecute the matter. The Applicant was also not in court and no information was availed to the court as to the whereabouts of the Applicant's counsel.

I tend to agree with the submission made by Mr. Ally that the matter is fit for dismissal for want of prosecution. A litigant who files a case or an application in court for whatever reasons is expected to diligently follow up the matter in court and heed to the scheduling orders of the court.

Non-appearance in court has dire consequences, one being a dismissal of an application or a suit, if the Applicant or the Plaintiff fails to appear in court to prosecute his/her case. If it is the defendant or Respondent who fails to appear, the written statement of defence may be struck out or the hearing of an application may proceed ex-parte.

In this matter, it is the Applicant who failed to appear in court to prosecute his case. Due to his failure to appear I, thus, hereby dismiss the application for want of prosecution. The dismissal, however, is with no orders as to costs.

It is so ordered.



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Dr. D.J. Nangela,

**JUDGE, HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

12th day of August, 2021