

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 56 OF 2000

PATRICE P. MWAIGOMOLE PLAINTIFF

VERSIS

ROBERT EDWARD HAWKINS DEFENDANT

RULING

Mwarija, J.

The applicants lodged an application which is two told. They applied for the following:

- (i) *Grant of extension of time for lodging a notice of appeal to the Court of Appeal against the judgment of this court dated 25/2/2005 arising from this case.*
- (ii) *An order staying execution of the decree passed in this case pending determination of the application and filing of an application for stay of execution in the Court of Appeal.*

On 3/10/2012 when the application was called for hearing, Mr. Sinare, learned counsel appeared for the applicants while Mr. Hyera, learned counsel appeared for the respondent. Upon agreed proposal made to the court, the learned counsel for the parties were ordered to argue the application by way of written submissions.

According to the fixed schedule of submissions, the applicants were to file their written submissions on or before 17/10/2012 while the respondent was to file his reply on or before 31/10/2012. Rejoinder if any, by the applicants was to be filed by 17/11/2012.

Until on 17/10/2012, the last date of the period fixed for filing submissions in support to the application, the applicants had not filed their written submissions. It was upon a notice issued and served to the counsel for the applicants by the respondents counsel that an application for extension of time to file written submissions was brought by the applicants on 8/11/2012. That application was dismissed on 26/2/2013 for want of merit.

The effect of dismissal of that application for extension of time to file written submissions in support of the pending application is to render it unprosecuted. It is now a trite law that failure to file written submissions within the time fixed by the court amounts to a failure to prosecute a case.

There are a number of authorities on that procedural aspect in trial of cases. In the case of **NIC of (T) & Another v. Shengena Ltd.** Civil Application No. 20 of 2007, for example, the Court of Appeal held as follows as regards such a failure:

"It is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."

In this case, since the applicants have failed to file their written submissions in support of the application as ordered by the court on 3/10/2012, they have obviously failed to prosecute the application. The same ought, therefore, to be dismissed. In the event, I accordingly hereby dismiss the application for want of prosecution with costs.

A. G. Mwarija

JUDGE

15/4/2013

15/4/2013

Coram : A. G. Mwarija, J.

For the Applicant/Defendant : Mr. Atito

For the Respondent/Plaintiff : Present in person.

CC: Butahe

COURT: Ruling delivered.

A. G. Mwarija

JUDGE

15/4/2013