

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 207 OF 2016**

**(Originating from the decision of the Temeke District Court in  
Civil Case No. 13 of 2016)**

**MAKARANGA HASSAN MAKARANGA.....APPELLANT**

**Versus**

**MANAGING DIRECTOR**

**D.P SHAPRIYA CO. LTD.....RESPONDENT**

**JUDGMENT**

**B.R. MUTUNGI, J:**

Originally at the Temeke District Court in Civil Case No. 13 of 2016 the appellant sued the respondent claiming for Tshs. 50,000,000/= being compensation for injuries he sustained in the course of employment which resulted in the amputation of his right hand. Before the hearing of the said suit on merits, the respondent did successfully raise a preliminary objection to the effect that, the trial court had no jurisdiction to entertain the matter. The said preliminary

objection was sustained hence the suit dismissed with no costs.

The appellant having been dissatisfied has preferred to appeal herein against the said decision. The appellant has raised three (3) grounds of appeal which are as follows;

1. *That the Honourable Magistrate erred in law and fact in failing totally to give a well reasoned judgment as required by the law. Thus, the judgment erroneously deprived the appellant of his right to compensation arising from the respondent's negligence.*
2. *That the Honourable Magistrate erred in law and fact by not considering the evidence tendered by the appellant.*
3. *That the Honourable Magistrate erred in law and fact by concluding that the appellant is not entitled to any compensation as claimed without taking into consideration that there is tort liability on the respondent.*

Thereof, the appellant has prayed the appeal be allowed, the dispute be determined on its merits and costs be borne by the respondent.

On 12/2/2018 when the matter was called for hearing, the appellant appeared in person while Mr. Muganyizi learned Advocate appeared for the respondent. It was agreed the appeal be disposed by way of written submissions. The appellant was supposed to file his submissions in chief in support of the appeal on or before 27/2/2018; the respondent to file the reply on or before 14/3/2018 and the rejoinder if any to be filed by 22/3/2018.

Perusing through the court record. I have discovered the appellant filed written submissions in chief on 15/3/2018 and the respondent has never filed the reply. All in all, the appellant has filed the said submissions beyond the scheduled order. He was supposed to file the same on or

before 27/2/2018. I am of the settled view that, the law relating to the legal effect on the party who fails to comply to file the written submissions as ordered by the court is well settled. On this stance I am persuaded by the case of **Hadija Zuberi Versus Bogwe Mbwana, PC Civil Appeal No. 98 of 2003 (High Court- Dar es Salaam Registry) (Unreported)** where it was held;

*'The practice of filing submissions is equivalent to schedule for hearing. **Therefore, failure to file submissions as ordered is equivalent to non-appearance at a hearing or want of prosecution.**'*  
[Emphasis is mine]

The Court of Appeal of Tanzania in one occasion did make emphasis on the same position and such time was in the case of **NIC OF (T) AND ANOTHER VERSUS SHENGENA LIMITED, CIVIL APPLICATION NO. 20 OF 2007 (CAT-DSM) (UNREPORTED)** at page 7, the Court held;

'The 1<sup>st</sup> Applicant did not file submissions on due date as ordered. Naturally, the court could not be made impotent by a party's inaction. It had to act. **And, it is trite law that, failure to file written submission (s) is tantamount to failure to prosecute one's case.**' [Emphasis is mine]

In the instant appeal, since the appellant has filed his written submissions beyond the scheduled order, in my view this obviously amounts to failure of the appellant to prosecute his appeal accordingly and the filed submission ought to be expunged from the record and returned to him.

Consequently, I hereby proceed to dismiss the appeal for want of prosecution with no order to costs considering the respondent is assisted by the legal Aid Centre.

It is so ordered.

  
**B.R. MUTUNGI**

**JUDGE**

**10/4/2018**

Right of Appeal Explained.

  
**B.R. MUTUNGI**

**JUDGE**

**10/4/2018**

Read this day of 13/5/2018 in the presence of the appellant and Edigar Mkwenda (Administrative Officer) for the respondent.

  
**B.R. MUTUNGI**

**JUDGE**

**10/4/2018**