

**THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

CIVIL CASE No. 214 OF 2018

TABITHA MARO.....PLAINTIFF

Versus

RADDY FIBRE SOLUTION LIMITED.....DEFENDANT

RULING

24/05/- 24/10/2019

J. A. DE-MELLO, J;

It was on the **24th May 2019** with the presence of the Plaintiff's Counsel one **Sinare Zaharan** and, **Counsel Juma Nassoro** for the Respondent, that, this Court ordered for **Written Submissions** towards the Application for '**Extension of Time**' as well as vacation of the **Ex-Parte order** that, had been issued by the Court, on the **19/02/2019** against the **Applicant**.

The scheduling order had the following pattern, by **Counsel Nassoro** for the Defendant one for the said Application, on or before the, **31/5/2019**, reply on, **07/06/2019** and, Rejoinder if any, by **14/06/2019**. The matter was then fixed for Ruling on **17/10/2019**. However, up to the time of delivering this Ruling, no submissions is on record as ordered more so from the Applicant. Consequences of non compliance with Court orders in this case filing of written submissions have two folds; **First** is the essence which

has been equaled to a hearing and, **Second**, is **Non Compliance** of Court orders, an abuse of Court process. A series of listed authorities have shared this position but, of essence is the case of **Fredrick Mutafurwa vs. CRDB (1996) Ltd & Others Land Case No. 146 of 2004** where it was held;

“Times and out of numbers, this Court has held that the practice of filing submissions tantamount to a hearing and therefore failure to file submissions has been likened to Non Appearance for Want of Prosecution”.

As for the Non Compliance of Court orders, it is the case of **TBL vs. Edson Dhobe, Misc. Application No. 96 of 2006 (Unreported)** where the above was reaffirmed, as the Court observed;

“Courts orders should be respected and complied with. Courts should not condone such failures. To do so is to set bad precedent and invite chaos. This should not be allowed to occur. Always Courts should exercise firm control over proceedings”.

In the absence of **Leave** to **Extend Time** to file submissions which Counsel would have hurriedly opted and prior to date of Ruling, the Court of Appeal of Tanzania in the case of **Masunga Mbegete & 2 Others vs. The Hon.**

Attorney General & Another, Civil Application No. 68 of 2010

(Unreported), the Court held:-

“...failure to file written submission within prescribed time and where there is no Application for extension of time the same has to be dismissed...” This, has not been preferred as observed.

The rationale behind the observance of the Courts orders had been well digested in the case of **Mobrama Gold Corporation Ltd vs. The Minister For Energy And Minerals & Other (1998) TLR 425**, where **Hon. Mapigano, J**; as he then was held that;-

“The rationale behind observance of rules of Court which are devised in the public interest to promote expeditious dispatch of litigation and that the prescribed time limits are not targets to be aimed at or expression of pious hope but requirement to be met. This principle is reflected in a series of rules giving the court discretion to dismiss on failure to comply with a time limit”.

In the absence of any explanation from the Applicant, for his failure to file written submissions, the Court is left with the belief that, the Defendant has failed to prosecute his application as he sat on his rights.

In the upshot, I thus dismiss the said Application for **Extension of Time** to set aside **Ex Parte order**, for nothing less nothing more than '**Want of Prosecution**' as I order for the substantive suit to proceed on its merits.

Costs to follow event.


J. A. DE-MELLO

JUDGE

24/10/2019.