

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

CRIMINAL APPEAL No. 180 OF 2014

(Originated from the Ruling of Kisarawe District court at Kisarawe in Criminal Case
No.126 of 2013 dated 27th day of May 2014 by A S Ally RM)

REPUBLIC.....APPELLANT

Versus

NOVATUCE MTORELARESPONDENT

JUDGMENT

18/10/ - 25/11/ 2019

J. A. DE-MELLO J;

The Appellant herein the Republic is dissatisfied with decision of the **District Court of Kisarawe** which acquitted the Respondent on **No case to Answer** basis, following the alleged contravention **321 (a) (b)** of **Penal Code Act Chapter 16 of the Laws (R.E. 2002)**.

They have lodged this Appeal on three grounds namely;

- 1. That, the trial Magistrate erred in law and in fact by concluding that the PW1 did not give explanation as to how purported to identify the accused person.**

2. That, the trial magistrate erred in law and in fact in evaluating the evidence adduced by the prosecution Witness.

3. That the trial magistrate erred in law and in fact concluding that the prosecution side failed to establish their case beyond reasonable doubt.

Notwithstanding orders, several notices for appearance that the Republic prayed for and the Court duly granted, but to no avail. When the matter first attracted my attention on the **10/6/2019**, last order was granted to **State Counsel Ndakidemi** for publication. On the **19/8/2019** **State Counsel Dhamiri** reported to have noted publication to the Respondent dated the **25th October 2019** and, which the Court ordered for an Ex Parte hearing on the **30th October 2019**, as judgment was slated for **25th November 2019**. The matter was to be heard by way of written submissions.

Surprisingly, and, as I compose this Judgment, no submissions has been filed in Court as scheduled. Consequences of failure to file written submissions has far fetched effects, as they normally equated to an oral hearing, which tantamounts to want of prosecution.

The law in Criminal Procedure Code Cap. 20 provides;

Section 366(1) - "At the hearing of the appeal, the appellant or his Advocate may address the Court in support of particulars set out in the petition of appeal and the public prosecutor, if he appear, may then address the court and thereafter, the court may invite

the appellant or his advocate to reply upon any matter of law or of facts raised by the public prosecutor in his address and the court may then, if it considers there is no sufficient ground for interfering, dismiss the appeal or may-

(a) Not relevant.

(2) an appellant, whether in custody or not, shall be entitled to be present at the hearing of his appeal."

It is thus significant for the Appellant to appear word "**shall**" **makes** it mandatory. Numerous decisions of Court of Appeal have held in favour of this same stance and to highlight a few, is the case of **Khalid Mwisongo vs. M/S UNITRANS (T) Ltd., Civil Appeal No. 56 OF 2011**, the Court stated;

"The purpose of filing a written submission is to enable the Court to better understand the nature of the appeal, the issues involved, and ultimately adjudicate upon and determine the appeal properly."

In a different cause, but, for same non filing of written submissions, the case of **Mechmar Corporation (MALAYSIA) Berhard vs. VIP Engineering & Marketing Ltd. Civil Application No. 11 of 2011** (Application for Review of Proceedings and Order of the Court of Appeal of Tanzania at Dar es Salaam) the Court of Appeal in interpreting the Court of Appeal Rules said;

"Where the appellant files the record of appeal or lodges the notice of motion, and fails to file the written submissions within

sixty days prescribed under this rule and there is no application for extension of time within which to file the submissions, the Court may dismiss the appeal or application."

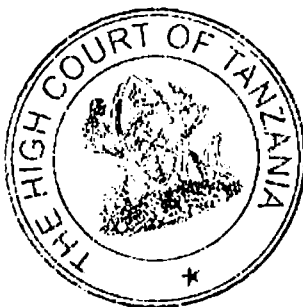
As remarked earlier on, the list is exhaustive to even include the case of **Godfrey Kimbe vs. Peter Ngonyani, Civil Appeal No. 41 OF 2014**, the court **National Insurance Corporation of (T) Ltd & another v. Shengena Limited, Civil Application No. 20 of 2007** where the same Court stated;

"The Applicant did not file submission on due date as ordered. Naturally, the court could not be made impotent by a party's inaction. It had to act. ... it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's Case.

Failure to file written submissions on a date scheduled by the Court, suggests absence of a party on hearing without notice and abuse of Court process which can never be condoned.

In the event, and for the foregoing reasons, I invoke the powers conferred upon by **section 383 (1) of Criminal Procedure Act Cap 20, of (R.E. 2002)** and accordingly dismiss the Appeal.

It is so ordered.




J. A. DE-MELLO
JUDGE
25/11/2019