

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

CIVIL CASE NO. 65 OF 2019

HALE WILSON MWENDAMSEKE

(Administrator of the Estate of the Late

Hale Wile Mwendamseke).....PLAINTIFF

VERSUS

ESTIM CONSTRUCTION COMPANY LIMITED.....1ST DEFENDANT

KASSIM MSISI LUSINGA.....2ND DEFENDANT

ALLIANCE INSURANCE CORPORATION LIMITED....3RD DEFENDANT

RULING

MASABO J.L.:-

The instant suit, the plaintiff is suing the defendants over a tortious liability owing to the death of the late Hale Wile Mwenamseke which occurred in 2013 as a result of an accident attributed to the 2nd Defendant's negligence driving. Upon being served the defendants jointly raised a preliminary objection on two points of law, that is: the suit is time barred, and (ii) that the court has no jurisdiction to entertain the suit.

The Preliminary objection was scheduled for hearing on 15/10/2019 on which the date the Plaintiff and his counsel, Mr. William Hassan defaulted appearance. Following the prayer for adjournment advanced by the Defendants' counsel, Mr. Adam Jabir Sikamkono, hearing of the preliminary objection was rescheduled to 12/12/2019 and later to 20/2/2020. On the

later date, the plaintiff entered appearance being represented by Ms. Miriam Majamba learned counsel who informed the court that she was not prepared to proceed as she has no instruction from the counsel who was handling the case file. She subsequently prayed for a short adjournment. In response thereto and for expeditiousness, Mr. Paul Happe who appeared for the Defendants on the material date prayed for the leave of this court to conduct the hearing of the preliminary objection by way of written submission. The prayer was supported by Ms. Majamba. Having considered the prayer, the Court duly granted it. A schedule order for filing written submission was subsequently agreed and issued by this court. In that scheduled order the Defendants were required to file their written submission on or before 5/3/2020. The Plaintiff was required to file her reply to the written submission on or before 19/3/2020 and rejoinder if any by the Defendant was to be filed on 26/3/2020.

In Compliance with the schedule the Defendants filed their written submission in chief on 4th March 2020. The plaintiff never filed his submission in reply and he rendered no explanation. On 24th March 2020 the Defendants filed a rejoinder submission in which they prayed that the suit be dismissed owing to the Plaintiff's failure/neglect to comply with the order of the court dated 20/2/2020 which implies that he has conceded to the preliminary objection therefore the suit must be dismissed. They cited the case of **Seti Tete v Mwanjelwa SACCOS**, Misc. Civil Application No. 22 of 2018 High Court of Tanzania at Mbeya(unreported) Today the matter came for Ruling.

The plaintiff defaulted appearance and has not rendered any notice for his absence.

Under the circumstances I find the submission made by Defendants to be meritorious. It is now a settled principle of law that the practice of filing written submission is equivalent to an oral hearing. Therefore the failure to file written submission is held to be tantamount to the failure to enter appearance on the date of hearing which renders the application, suit or appeal a best candidate for dismissal (See **Seti Tete v Mwanjelwa SACCOS**, Misc. Civil Application No. 22 of 2018 High Court of Tanzania at Mbeya(unreported); and **Buyamba John Vs. Adili Bank Corporation Ltd & Another**, Civil Case No. 146 of 2000 HC at Dar-es-Salaam Registry (Unreported)).

I accordingly dismiss the suit.

DATED at DAR ES SALAAM this 20th day of May 2020.



J.L. MASABO

JUDGE