

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

MISC. CIVIL APPLICATION No. 669 OF 2019

(Arising from decision of Ulanga District Court at Mahenge-Morogoro in Civil Case No. 3 of 2018 delivered by Hon. M. Mahumbuga dated on 28th August, 2019)

URUSULA NGAZENGA.....APPLICANT

Versus

JOSEPHAT MADINGA.....RESPONDENT

RULING

30th June, 2020 - 14th July, 2020

J. A. DE - MELLO J;

The Applicant has moved this Court under **section 14** of the **Law of Limitation Act, Cap. 89, R.E 2002**, and, **section 95** of **Civil Procedure Code, Cap 33, R.E 2002**, for an **Extension of Time** within which to **file Appeal Out of Time** against the **Judgment** and, **Decree** of **Ulanga District Court at Mahenge Morogoro in Civil Case No. 3 of 2018** delivered by **Hon. M. Mahumbuga** dated on **28th August, 2019**.

The Application is supported by an Affidavit of **Urusula Ngazenga**, the Applicant herself filed on the **16th** day of, **December, 2019**.

What gave rise to this **Miscellaneous Civil Application**, is a claim of **Tanzania Shillings 40,000,000/=** being specific damages, general damages to be assessed by the Court together with payment of interest at commercial rate on specific and, general damage, from the date of judgment to the payment in full for loss of five thousands **5,000 litres** of diesel caused by the Applicant who was the employee of the Respondents fuel station. judgment was delivered favour of the Respondent, ordering the Applicant to pay **TShs. 9,250,000** and, **10%** interest and, costs of the suit. She admits to be out of time and, hence this Application.

On **12th May, 2020** this Court ordered this Application to be disposed by the way of written submissions, whereby the Applicant was to file his on or before **28th May, 2020**, reply by the Respondent on the **23rd of June, 2020** and, rejoinder on **30th June, 2020**. Un-precedented, it is only the Respondent who has complied with the scheduling order fixed by the Court, in absence of submissions from the one moving the Court, the Applicant. This is wrong considering absence of facts from the Applicant as to what delayed her to file the Appeal. This then not done, this Court shall focus on

failure to file written submission whose essence is equaled to a hearing. It tantamounts to **want of prosecution** attracting a dismissal. In the case of **Director of Public Prosecutions vs. Said Saleh Ali, Criminal Appeal No. 476 of 2017, Court of Appeal of Tanzania at Zanzibar** held that; **"...if a party fails to file his/her submission on scheduled date it is equated as if he/she has failed to appear on a hearing date with a consequence of dismissing the matter before the Court."**


See also the case of **National Insurance Corporation of (T) Ltd & another vs. Shengena Limited, Civil Application No. 20 of 2007** and **Patson Matonya vs. The Registrar Industrial Court of Tanzania & Another, Civil Application No. 90 of 2011** that; **"...failure by a party to lodge written submissions after the Court has ordered a hearing by written submissions is tantamount to being absent without notice on the date of hearing"**.

In the **Shengena case (supra)**, it is observed; **"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".

The list is exhaustive, all alluding to the above position which this Court falls squarely into as it finds the Applicant in contravention. She has not only failed to prove her own case but worse even heed orders. In the interim, I accordingly dismiss the Application with costs.

It is so ordered.


J. A. DE- MELLO

JUDGE

14th July, 2020

