

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(DISTRICT REGISTRY OF MBEYA)**  
**AT MBEYA**  
**PC CIVIL APPEAL NO. 04 OF 2019**

(Arising from Civil Appeal No. 17 of 2019 in the District Court of Mbeya at Mbeya, Hon. Chaungu, SRM. Originating from Civil Case No. 23 of 2019 in Iyunga Primary Court. )

**MONICA D/O DICKSON.....APPELLANT**

**VERSUS**

**HUSSEIN J. WASUHA (KNY CHAMA**

**CHA WAFANYABIASHARA).....RESPONDENT**

**RULING**

Date of Last Order: 01/07/2020  
Date of Ruling : 06/08/2020

**MONGELLA, J.**

The appellant under the legal representation of Ms. Caroline Mseja, learned advocate, filed this appeal against the decision of the District court of Mbeya. On 1<sup>st</sup> July 2020 when the matter came for hearing both parties prayed to argue the appeal by written submissions. The prayer was granted and the Court scheduled the dates for filing written submissions as follows: the appellant was to file submission in chief on or before 15<sup>th</sup> July 2020; the respondent was to file his submission in reply on or before 29<sup>th</sup> July 2020; and rejoinder, if any, from the appellant was to be filed on or before 05<sup>th</sup> August 2020. However, until 06<sup>th</sup> August 2020 when the matter

came for necessary orders, the appellant had not filed his submission in chief. The respondent however filed his reply which was rather surprising.

On this date, when the matter came for necessary orders, Ms. Ella Tupa, learned advocate, appeared holding brief for Ms. Caroline Mseja. She informed the court that Ms. Mseja has been sick and thus failed to file the written submission for the appellant within the time scheduled by the court. She therefore prayed for the court to reschedule its previous order and extend time for the appellant to file the appeal. The respondent being unrepresented had nothing to address the court on the situation. I therefore had to deliberate on the prayer advanced by Ms. Ella Tupa.

First and foremost, it is a settled legal principle that the failure to file written submission as ordered by the court is a manifestation of failure to prosecute the case. Failure to file written submission on the dates scheduled by the Court is as good as non-appearing on the date fixed for hearing and need not be overemphasized. The applicant and his advocate failed to submit written submission on the date fixed, something which is tantamount to non-appearance on the date of hearing. This legal position has been settled by the court in this land on various decisions as shall be demonstrated hereunder:

In ***Harold Maleko v. Harry Mwasanjala***, DC Civil Appeal No. 16 of 2000, (HC-Mbeya, unreported), for instance, Makanja, J. (as he then was) held:

*"I, hold, therefore that the failure to file written submission inside the time prescribed by the court order was*



*inexcusable and amounted to failure to prosecute the appeal. Accordingly, the appeal is dismissed with costs."*

In **Geofrey Chawe v. Nathaniel K. Chawe**, Misc. Civil Application No. 22 of 1998 it was held:

*"...failure to file written arguments on the part of the learned counsel for the applicant is an omission which constitutes want of prosecution. I would dismiss the application on that account."*

In another case of **Olam Tanzania Limited v. Halawa Kwilabya**, DC Civil Appeal No. 17 of 1999 it was also held:

*"Now what is the effect of a court order that carrier instructions which are to be carried out within a pre-determined period? Obviously such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or it will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submission is part of hearing. So if a party fails to act within prescribed time he will be guilty of in-diligence in like measure as if he defaulted to appear...This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."*

In **P3525 LT Idahya Maganga Gregory v. The Judge Advocate General**, Court Martial Criminal Appeal No. 2 of 2002 (unreported) the Court held:

*"It is now settled in our jurisprudence that the practice of filling written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequences of failure to file*

written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. Court decision on the subject matter is bound...Similarly, courts have not been soft with the litigants who fail to comply with court orders, including failure to file written submissions within the time frame ordered..."

The court can however grant extension and reschedule the orders for filing submissions upon sufficient cause being advanced. On behalf of Ms. Mseja, Ms. Tupa requested for extension of time on the ground that Ms. Mseja fell sick. As much as I agree that sickness can amount to good cause, the same cannot be entertained by the court without proof. Ms. Tupa just presented hearsay statements from Ms. Mseja without any medical documents to support the prayer. The courts have treated sickness as sufficient reason where the applicant proved the same by providing authentic medical documents. See: **Richard Mgala & 9 Others v. Aikael Minja & 4 Others**, Civil Application No. 160 of 2015 (unreported) and **Kennedy Mushi v. General Tyre & Another**, Civil Appeal No. 215 of 2001 (unreported).

In my view therefore, under the circumstances, the appellant or her advocate should have made an application before the court, preferably before the expiry of the due date or immediately after the expiry date for extension of time accounting for the delayed time. Having said all, I dismiss the appellant's appeal for want of prosecution, with costs.

Dated at Mbeya on this 06<sup>th</sup> day of August 2020



  
**L. M. MONGELLA**  
**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 06<sup>th</sup> day of August 2020 in the presence of both parties and Ms. Ella Tupa, learned advocate holding brief for Ms. Caroline Mseja, learned advocate for the appellant.

  
**L. M. MONGELLA**  
**JUDGE**