

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISCELLANEOUS LAND APPLICATION NO. 43 OF 2020

*(From the District Land and housing Tribunal for Mbeya at Mbeya in Land
Application No. 314 of 2018)*

ABISAI DAMSON KIDUMBA.....APPLICANT

VERSUS

ANNA N. CHAMUNGU.....1ST RESPONDENT

SELO LEASE AND FINANCE LTD (SELFINA).....2ND RESPONDENT

YONO AUCTION MART.....3RD RESPONDENT

FURAHINI VAHAYE.....4TH RESPONDENT

RULING

Date of Last Order: 16/09/2020
Date of Ruling : 30/09/2020

MONGELLA, J.

Under certificate of urgency, the applicant filed in this Court an application for extension of time within which to file an application for revision against the decision of the District Land and Housing Tribunal for Mbeya (the Tribunal) in Execution Application No. 314 of 2018. The court ordered the application to be argued by way of written submissions. The scheduling orders for filing the written submissions was as follows: the applicant was to file his written submission on or before 19th August 2020; the 1st and 4th respondents were to file their submissions in reply on or



before 2nd September 2020; rejoinder by the applicant, if any, was to be filed on or before 9th September 2020. The matter was to proceed ex parte against the 2nd and 3rd respondents because they defaulted in filing their counter affidavits as ordered by the court and did not enter appearance.

It appears on record that the applicant and his advocate, Mr. Kamru Habib did not adhere to the scheduled orders in filing the written submissions. In fact, up to the date the matter came for necessary orders for fixing the date of ruling, no written submission for the applicant was filed. On her part, the 4th respondent through her advocate, Ms. Joyce Kasebwa, filed a reply submission addressing the default by the applicant in filing his written submission.

In her submission Ms. Kasebwa prayed for the application to be dismissed with costs for want of prosecution because non filing of written submissions is tantamount to non-appearance by a party. She argued that court orders do not stand as decorations and therefore cannot be neglected without sufficient reasons. She cited a number of decisions to support her prayer and arguments being: **Harold Maleko v. Harry Mwasanjala**, DC Civil Appeal No. 16 of 2001 (unreported); **Olam Tanzania Limited v. Halawa Kwilabya**, DC Civil Appeal No. 17 of 1999 (unreported); **Chawe v. Chawe**, Misc. Civil Application No. 22 of 1998 (unreported); **Andrea Njumba v. Trezia Mwigobene**, PC Civil Appeal No. 1 of 2006 (unreported); **Seti Tete v. Mwanjelwa Saccos**, Misc. Civil Application No. 22 of 2018 (HC at Mbeya, unreported); **Castelow v. Somerset County Council** [1993] All ER 952; **Tanzania Harbours Authority v. Mohamed R. Mohamed**, Civil Case No.



88 of 1999; and that of **Mobrama Gold Corporation Ltd v. Minister of Energy and Minerals and Others** (1998) TLR 425.

I in fact agree with Ms. Kasebwa that 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 overemphasize. The applicant and his advocate failed to submit their written submission on the date fixed. They also failed to seek indulgence of the court to extend the time if there was good reason for not adhering to the court orders. As decided in the cases cited by Ms. Kasebwa, the law is settled to the effect that a case shall face dismissal for want of prosecution if a party fails to file his written submission on the date fixed by the court. 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 filing 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 litigants who fail to comply with court orders, including failure to file written submissions within the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records and are to be disregarded."

See also **Wananchi Marine Product (T) Limited v. Owners of Motor Vehicle**, Civil Case No. 123 of 1996 (HC, DSM-unreported) and **Leonard Nyang'ye**



v. The Republic, Misc. Criminal Application No. 39 of 2016 (HC Mbeya, unreported). Consequently, under the circumstances, I dismiss the applicant's application with costs for want of prosecution.

Dated at Mbeya on this 30th day of September 2020.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 30th day of September 2020 in the presence of the applicant and Ms. Joyce Kasebwa, learned advocate for the 4th respondent.




L. M. MONGELLA

JUDGE