

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

MISCELLANEOUS CIVIL APPLICATION NO. 41 OF 2018

(Arising from Ruling and Order of the High Court of the United Republic of Tanzania in Misc. Civil Application No. 13 of 2018. Originating from Civil Case No. 50 of 2016 in the Resident Magistrate's Court of Mbeya.)

FAMARI INVESTMENT (T) LTD.....APPLICANT

VERSUS

ABDALLAH SELEMANI KOMBA

(As the Administrator of the Estate of the

Late SHARIFA ABDALLAH SALAMA).....**RESPONDENT**

RULING

Date of Last Order: 11/12/2019
Date of Ruling : 11/03/2020

MONGELLA, J.

The Applicant, through the legal services of Mr. Leonard Elias Magwayega, learned Advocate, filed an application seeking for leave to appeal to the Court of Appeal against the decision of this Court (Ngwembe, J.) in Misc. Civil Application No. 13 of 2018.

On 06th September 2019, both parties' counsels prayed before this Court to argue the application by written submissions. The prayer was granted and the Court scheduled the dates for filing written submissions as follows:

the Applicant was to file submission in chief on or before 20th September 2019; the Respondent was to file his submission in reply on or before 04th October 2019; and rejoinder, if any, from the Applicant was to be filed on or before 11th October 2019. However, until 11th December 2019 when the matter came for necessary orders, the Applicant had not filed his submission in chief. The Respondent on the other hand, through his Advocate, Mr. Alfredy Chapa filed his submissions and addressed the non-filing and non-service of the Applicant's submission in chief upon them.

In his submission Mr. Chapa informed the Court that until 25th October 2019, when he went and perused the Court file, the Applicant had not filed his written submission. He argued that the failure to file the written submission as ordered by the Court is a manifestation of failure to prosecute the case. In support of his arguments, he cited a number of cases. These include that of **Harold Maleko v. Harry Mwasanjala**, DC Civil Appeal No. 16 of 2000, (HC-Mbeya, unreported) in which 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."

Another case he cited was that of **Geofrey Chawe v. Nathaniel K. Chawe**, Misc. Civil Application No. 22 of 1998 in which 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."

He also cited that case of ***Olam Tanzania Limited v. Halawa Kwilabya***, DC Civil Appeal No. 17 of 1999 in which it was 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."

The other case he cited is that of ***Andrea Njumba v. Trezia Mwigobene***, PC Civil Appeal No. 1 of 2006 (HC Mbeya, unreported) in which it was also held:

"If a party fails to act within the time prescribed he will be guilty of diligence in like measures as if he has defaulted to appear and submissions which were filed out of time will not be acted upon."

Armed with the above cited decisions, Mr. Chapa prayed for the Applicant's application to be dismissed with costs.

I in fact agree with Mr. Chapa's submission 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 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

demonstrated in the cases cited by Mr. Chapa, it has already been settled 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 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. 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). From the foregoing I dismiss the Applicant's application with costs for want of prosecution.

Dated at Mbeya this 11th day of March 2020



Amella
L. M. MONGELLA
JUDGE
11/03/2020

Court: Ruling delivered in Mbeya in Chambers on this 11th day of March 2020 in the presence of the Respondent and his Advocate, Mr. Alfredy Chapa.


L. M. MONGELLA
JUDGE
11/03/2020