

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

MISCELLANEOUS CIVIL APPLICATION NO. 22 OF 2018

(From DC Civil Appeal No. 26 of 2016. Originating from Civil Case No. 16 of 2016)

SETI TETE.....APPLICANT

VERSUS

MWANJELWA SACCOS.....RESPONDENT

RULING

Date of Last Order: 04/12/2019
Date of Ruling : 27/02/2020

MONGELLA, J.

The Applicant filed an application in this Court seeking for leave to file an application for leave to appeal to the Court of Appeal out of time; to lodge notice of appeal and serve it to the Respondent out of time; and to file and serve letters applying for certified copies of proceedings, judgment and decree out of time.

On 6th September 2019 when the matter was scheduled for hearing, the Appellant prayed before this Court for the application to be argued by way of written submissions. The prayer was conceded by the Respondent. The Court then scheduled the dates of filing the submissions as follows: The Applicant was to file his written submission on or before 20th September

2019; the Respondent was to file his reply on or before 4th October 2019; and the Applicant was to file his rejoinder, if any, on or before 11th October 2019.

When the matter came for necessary orders on 4th December 2019, the Appellant had not yet filed his submission in chief. He informed the Court that he was not able to file his submission because he was attending a funeral and orally prayed for extension of time. However, he could not tell the Court the specific dates in which he attended the said funeral to the extent of not adhering to the Court orders when asked to by the Court. The Court made a finding that the reason adduced by the Appellant was not sufficient and thus denied him extension of time to file his written submission.

Written submissions are a substitute for oral hearing and thus if a party fails to file his written submission it is as good as he has defaulted entering appearance before the Court as ordered. In **Harold Maleko v. Hary Mwasanjala**, Civil Appeal No. 16 of 2000 (unreported) it was held that the failure to file written submission on the time prescribed by the court order is inexcusable and amounts to failure to prosecute the appeal. In **Godfrey Chawe v. Nathaniel K. Chawe**, Misc. Civil Application No. 22 of 1998 (unreported) 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..."

The same position was also settled in the case of **OLAM (T) Ltd. v. Hawa Kwilabya**, Civil Appeal No. 17 of 1999 and that of **Andrea Numba v. Trezia Mwigobane**, Civil Appeal No. 1 of 2006 (both unreported). In the upshot the Appellant has defaulted in honouring the orders of this Court to file his written submission thus failed to prosecute his application. Following this default the Applicant's application is hereby dismissed with costs for want of prosecution.

Dated at Mbeya this 27th day of February 2020.


L. M. MONGELLA
JUDGE
27/02/2020

Court: Ruling delivered in Mbeya in Chambers on this 27th day of February 2020 in the presence of both parties appearing in person.


L. M. MONGELLA
JUDGE
27/02/2020

Right of appeal to the Court of Appeal duly explained.




L. M. MONGELLA
JUDGE
27/02/2020