

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**

**PC. CIVIL APPEAL No. 79 OF 2019**

(Originating from Temeke District Court at Temeke Matrimonial Cause No.123 of 2018,  
Original Temeke Primary Court in Matrimonial Cause No. 60 of 2018,)

**SALAMA NASSORO MWALIMU.....APPELLANT**

Versus

**MARIAM MATHIAS CHILAMBO.....RESPONDENT**

**JUDGMENT**

17<sup>th</sup> March, 2020 - 26<sup>th</sup> March, 2020.

**J. A. DE-MELLO J;**

Aggrieved by the decision of Appellant lodged this Appeal on the following grounds;

- 1. That, the first Appellate Court erred in law by upholding a decision of the Primary Court without consulting the Assessors' opinion.**
- 2. That, the first Appellate Court erred in law and, fact in holding that the Trial Court did critically analyses and, gave due consideration of the strong evidence adduced by the Appellant in reaching its decision.**

3. That, the first Appellate Court erred in law and, fact in holding that the Trial Court properly identified the said matrimonial properties and did take into account the extent of contribution between the Parties in the acquisition of matrimonial properties.
4. That, the first Appellate Court erred in law and fact in holding that there was no misconduct and mismanagement committed by the Respondent towards matrimonial properties.

It is the Appellant's ultimate prayer that, the Appeal be allowed with costs, the whole proceedings, decision, Judgment and, orders be quashed, nullified and, set aside. **Albert Sylvester Nkuhi**, learned Counsel appeared and, fended the Appellant whereas; the, Respondents enjoyed the Legal Aid, providers, (TAWLA). Written submissions was preferred by the Appellant, conceded by the Respondent and, which the Court duly granted, whose scheduling reflected the following pattern; By the Appellant, on or before the **3<sup>rd</sup> December, 2019**, the Respondent on **24<sup>th</sup> December, 2019**, with Rejoinder, if any, on or before the **2<sup>nd</sup> January 2020**.

However, and, sadly so, none of the Parties have complied to the Courts Order, which for the Respondent, and having not been served with one could not file his. It is a trite law that, "**Non Compliance**" to file written submissions tantamounts to "**Non Appearance**", whose consequential attracts a **Dismissal**. This is the position of law under the Civil Procedure Code, translating into a normal hearing. Several cases have laid down that position as I drew mine from the case of **Director of Public Prosecutions**

vs. **Said Saleh Ali, Criminal Appeal No. 476 of 2017** [Unreported], at **page 18** the last paragraph, the Court of Appeal of Tanzania sitting at Zanzibar observed as follows;

**"Before we conclude our decision, we think, it is worthy note that arguing on application /appeal by way of written submission is synonymous with presenting oral application before the Court. Thus, if a party fails to file his/her submission on a scheduled date, it is equated as if he/she has failed to appear on a hearing date with consequence of dismissing the matter before the court."**

As for rational, the case of **Khalid Mwisongo vs. M/S UNITRANS (T) Ltd., Civil Appeal No. 56 OF 2011**, the Court stated;

**"The purpose of filing a Written Submissions is to enable the Court to better understand the nature of the appeal, the issues involved, and ultimately adjudicate upon and determine the appeal properly."**

In the case of **Mechmar Corporation (MALAYSIA) Berhard vs. VIP Engineering & Marketing Ltd. Civil Application No. 11 of 2011** (Application for Review of Proceedings and Order of the Court of Appeal of Tanzania at Dar Es Salaam) the Court of Appeal in interpreting the Court of Appeal Rules said;

**"Where the Appellant files the record of Appeal or lodges the notice of motion, and, fails to file the written submissions within sixty days prescribed under this rule and there is no application for**

**extension of time within which to file the submissions, the Court may dismiss the appeal or application."**

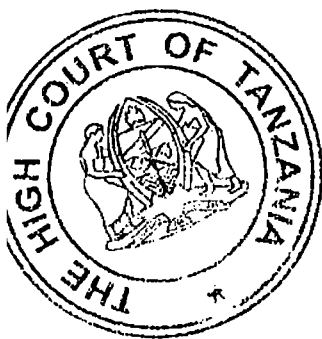
In the case of **Godfrey Kimbe vs. Peter Ngonyani, Civil Appeal No. 41 OF 2014**, the Court National **Insurance Corporation of (T) Ltd & another v. Shengena Limited, Civil Application No. 20 of 2007** where the same Court stated;

**"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**

For the foregoing reasoning, the written submissions missing, this Application has no legs to stand upon. I hence dismiss it for both this **Want of Prosecution**.

I waive costs considering it being a Matrimonial Matter.

It is so ordered



  
**J. A. De-Mello**

**Judge**

**26<sup>TH</sup> March, 2020**