

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

**MISC. CIVIL APPLICATION No. 516 OF 2019**

**AMIRI BUSHIRI AMRI AND ANOTHER.....APPLICANT**

Versus

**YUSUPH ABDALLAH MAGENGE.....RESPONDENT**

**RULING**

12.11.2019 - 17.03.2020

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

The Court is moved under **Order XXXVII Rule 1 (a)** and, **2 (1)** of the **Civil Procedure Code Cap 33**, filed under Certificate of Utmost Urgency, accompanied with the Applicants Affidavit, for three prayers namely;

- 1. That, this Honorable Court be pleased to order for Injunction by stopping the Respondent from collecting rents from the tenants and any other person acting on his behalf pending determination of the PC Civil Appeal No. 107 of 2018 which is pending before this court.**
- 2. That, this Honorable Court be pleased to order the Respondent to submit all the income he and his fellows collected since 2011 from all the three houses which are part of the deceased's estate soon after the death of the deceased.**

**3. Any other Reliefs this Honorable Court deems fit and just to grant.**

Worth noting, is the pending main in which this Application finds basis and which takes precedence over it as parties were granted a hearing by way of written submissions. The pattern had the **27<sup>th</sup> of November, 2019** for the Applicant whereas the Respondent, on or before **21<sup>st</sup> of December 2019**, Rejoinder if any, by **2<sup>nd</sup> of January 2020** and, Ruling to be pronounced on the **27<sup>th</sup> of February, 2020**. Unfortunately, and in abuse of the order, vide letter dated the...the Applicants prayed for Extension of Time to file their Written submissions by **4<sup>th</sup> of December, 2019** but, which again, they failed to honor their promise. Up to the moment of composing this ruling, nothing has been forthcoming from the one moving the Court, the Applicant. The rational behind filling submissions cannot be overstated as been explained in many and, several cases, to include this one of, **Khalid Mwisongo vs. M/S UNITRANS (T) Ltd, Civil Appeal No. 56 of 2011**, in which the Court stated;

**"The purpose of filing a written submission 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."**

Similarly was, in the case of **Godfrey Kimbe vs. Peter Ngonyani, Civil Appeal No. 41 of 2014**, that **"failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case"**. In support thereof is what the case of

**National Insurance Corporation of (T) Ltd & Another vs. Shengena Limited, Civil Application No. 20 of 2007** where the same Court emphasized;

**"The Applicant did not file submission on due dates 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.**

Also, in the case of **Director of Public UBLIC Prosecution vs. Said Saleh Alii Criminal Appeal No. 476 of 2017**, where **Mkuye J.A** stated;

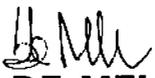
**"Thus, if a party fails to file his/her submissions on a scheduled date it is equated as if he/she has failed to appear on a hearing date with a consequence of dismissing the matter before the Court."**

The same is the case, in the of **Mechmar Corporation (Malaysia) Berhard vs. VIP Engineering & Marketing Ltd., Civil Application No. 11 of 2011** and, **Patson Matonya vs. The Registrar Industrial Court of Tanzania and Another, Civil Application No. 90 of 2010**

In the event, and for the foregoing reasons, the Application is hereby **Struck Out for Want of Prosecution.**

It is so ordered



  
**J. A. DE-MELLO**

**JUDGE**

**17/03/2020**