

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

LAND APPEAL No. 1 OF 2020

*(C/f Land Appeal No. 87 of 2018 District Land and Housing Tribunal for Moshi at
Moshi, Original Land Case No. 29 of 2018 Mabogini Ward Tribunal)*

ELIHAKI MUSA KANYIKA APPELLANT

Versus

BADI SALEHE MSANGI RESPONDENT

23^d April & 28th May, 2021

JUDGMENT

MKAPA, J.

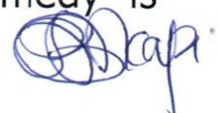
The appellant Elihaki Musa Kanyika being dissatisfied by the decision of the District Land and Housing Tribunal for Moshi at Moshi (the District Tribunal) in **Land Appeal No. 85 of 2018** delivered on 17th October 2019, preferred this appeal on two grounds.

The factual brief of the present case is that the appellant had initially filed application in Mabogini Ward Tribunal (the trial tribunal) in **Shauri No. 16/2017** claiming the respondent to have trespassed into his land measuring two (2) acres. The trial tribunal decided in his favour. Aggrieved, the respondent herein appealed to the District Tribunal which quashed and set aside the whole proceeding and decision of the trial tribunal and ordered the matter to be tried afresh before a competent

tribunal. Aggrieved, the appellant preferred this appeal on two grounds;

1. That, the Chairman erred in law and in fact in failing to properly evaluate the evidence which led to miscarriage of justice,
2. That, the Chairman erred in law and in fact in deciding that the suit land is not the property of the appellant while the evidence on record showed clearly that the suit land had never been pass on to the respondent.

When this matter was called for hearing on 25/11/2020 parties consented to argue the appeal by filing written submissions. The filing schedule was set for the appellant to file written submission in chief on or before 8/12/2020; reply on the submission made on or before 22/12/2020; rejoinder on 30/12/2020; and the matter was set for mention on the same day. The appellant was unrepresented while the respondent had the services of Ms. Jane James, learned advocate. The appellant for apparent no reason did not file his submission as ordered by this court. Meanwhile, counsel for the respondent filed her reply arguing that since the appellant neither filed his submission as scheduled nor prayed for extension of time there can be no doubt that he had lost interest in prosecuting his appeal. She went on arguing the fact that appellant's failure to comply with court order is as good as failure to prosecute his case of which the only remedy is



dismissal of the appeal with costs for want of prosecution. She relied her argument on the decision in the case of **Tabitha Maro V Raddy Fibre Solution Limited, Civil Case No. 214 of 2018, HC Dar Es Salaam** in which adherence to Court orders was underscored.

In the present appeal it is sufficiently established that the appellant failed to comply with the court order of filing a written submission. He did not even attempt to apply for extension of time. The order by the Court dated 25/11/2020 was for the purposes of regulating the hearing proceedings by way of written submissions within a prescribed time. In this context I may refer to High Court decision related to observance of court orders in the case of **Mankobrand V. Miroslav Katik and another (TZHC) Civil Case No 321 of 1997**, Dar-Es-Salaam Registry of which I found it persuasive where the court observed;

".....they are meant to command parties to act within a timeframe fixed by the Court. If the parties are to act in total disregard to those orders then the court business will be rendered uncertain; and will not be good for the efficient administration of justice....."

The law is well settled to the effect that failure to file written submissions on a date scheduled by the Court tantamount to non- appearance of a party on the date of hearing without

notice. This position was propounded in the decision in the case of **Godfrey Kimbe V Peter Ngonyani**, Civil Appeal No. 41 of 2014 CAT at Dar es salaam (unreported), where the Court of Appeal referring to its decision in **National Insurance Corporation of (T) Ltd & another V Shengena Limited**, Civil Application No. 20 of 2007 and **Patson Matonya V The Registrar Industrial Court of Tanzania & another**, Civil Application No. 90 of 2011 (both unreported), observed;

*"In both cases, among many others, the Court held that failure by a party to lodge written submissions after the Court has ordered a hearing by written Submissions is tantamount to being absent without notice on the date of hearing. In the **Shengena** case, for instance, we observed:*

*"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"***
[Emphasis supplied].

The aforesaid authorities are abundantly clear. In the present appeal failure by the appellant in filing his submissions contrary




to the order of the Court dated 25th November 2020, tantamount to appellant's failure to prosecute his appeal.

In the circumstance the appeal is hereby dismissed with costs consequently, the District Tribunal's decision is upheld.

It is so ordered.

Dated and Delivered at Moshi this 28th May, 2021.




S. B. MKAPA
JUDGE
28/05/2021