

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

MISC. LAND APPLICATION NO. 81 OF 2020

SADOCK DANIEL JACOB (*Administrator of*
the Estate of the Late Rev. RONALD MLONGETCHA) **APPLICANT**

VERSUS

ALEXANDER KAHANA EDWARD **1ST RESPONDENT**

JULETI INVESTMENTS CO. LTD **2ND RESPONDENT**

KCB BANK TANZANIA LTD **3RD RESPONDENT**

MM AUCTIONEERS & DEBT COLLECTIONS LTD ... **4TH RESPONDENT**

RULING

30th March & 8th June, 2021

ISMAIL, J

In this application, the Court is called upon to grant an injunctive order, restraining the respondents and their agents from evicting, damaging, alienating or disposing of the house on Plot No. 45 Block "M", Pasiansi, Mwanza, pending final determination of the main suit.

The application is supported by an affidavit sworn by the applicant in which details of the grounds on which the application is based are set out. The averment by the applicant is that the suit property has been placed on sale for recovery of the sum allegedly due to the 3rd respondent. The said sum was allegedly advanced to the 2nd respondent, and that the suit property was pledged as a collateral against the said loan. The applicant's contention is that the said house was a subject of a legal tussle between the late Rev. Ronald Mlongetcha and the 1st respondent, and that the same culminated in the Court's decision that confirmed the deceased's ownership.

The respondents are opposed to the prayer for the injunctive order. Through two separate joint affidavits, sworn by Eric Katemi, counsel for the 1st and 2nd respondents, and George Mwaisondola, counsel for the 3rd and 4th respondents, the applicant's contention on the ownership of the suit property has been rebutted. The contention by the respondents is that the suit property belongs to 2nd respondent, acquired through a disposition from the 1st respondent. The respondents valiantly denied that sale of the said property was imminent.

After the parties' exchange through sworn depositions, the matter was slated for disposal through written submissions whose filing was to conform to the schedule devised by the Court (in the counsel's concurrence) on 30th March,

2021. As is the practice, the applicant was accorded the privilege of addressing the Court first, and that his submission was to be filed on or before 8th April, 2021. However, by close of business on that date, nothing had been filed by the applicant's counsel, and no extension had been sought for filing of the said submission outside the scheduled time. Such failure left the respondents with nothing to address the Court on.

Following the applicant's failure, the Court is inevitably under obligation to rule on the course of action to be taken in that respect.

The established legal position in this country is that, failure to conform to the order for filing written submissions constitutes a failure by the parties to prosecute a case in which they are involved. Where the default is at the instance of a party that instituted the matter in respect of which submissions were to be preferred, the resultant consequence is to have the case dismissed for want of prosecution. This position has been encapsulated in numerous decisions of the Court of Appeal and this Court. The case of ***National Insurance Corporation of (T) Ltd & Another v. Shengena Ltd***, CAT-Civil Application No. 20 of 2007 (DSM-unreported) stands out in that respect. The upper Bench held as follows:

"The applicant did not file submission on the due date as ordered. Naturally, the Court could not be made impotent by the 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."

The stance taken in the just cited case is shared by the Court, as enunciated in ***Olam Tanzania Limited v. Halawa Kwilabya***, HC-(DC.) Civil Appeal No. 17 of 1999 (unreported), wherein it was held thus:

"Now what is the effect of a court order that carries 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 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 postulation in ***Olam Tanzania Limited v. Halawa Kwilabya*** (supra) was echoed in the subsequent decision in ***P3525 LT Idahya Maganga Gregory v. Judge Advocate General***, Court Martial Criminal Appeal No. 2 of 2002 (unreported). The Court remarked:

"It is now settled in our jurisprudence that the practice of filing 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 consequence of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. The 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."

See also: ***Tanzania Harbours Authority v. Mohamed R. Mohamed*** [2002] TLR 76; ***Patson Matonya v. Registrar Industrial Court of Tanzania & Another***, CAT-Civil Application No. 90 of 2011; and ***Geoffrey Kimbe v. Peter Ngonyani***, CAT-Civil Appeal No. 41 of 2014 (DSM-unreported).

It follows that, since the applicant has taken a path that is similar to that censured in the cited decisions, the instant application must, inevitably, suffer from a similar fate. It simply has to fail, on the sole ground that the applicant has failed to prosecute it.

Accordingly, I order that the application be dismissed for want of prosecution. No order as to costs.

It is so ordered.

DATED at **MWANZA** this 8th day of June, 2021.



M.K. ISMAIL

JUDGE