

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

AT MWANZA

PC. MATRIMONIAL APPEAL NO. 3 OF 2021

*(Appeal from the judgment of the District Court of Geita at Geita (Maweda, SRM) in
Matrimonial Appeal No. 13 of 2020 dated 5th of October, 2020)*

ABEL MABULA APPELLANT

VERSUS

NAOMI ZAKARIA RESPONDENT

JUDGMENT

1st July, & 19th August, 2021

ISMAIL, J.

This is an appeal from decision of the District Court of Geita at Geita (1st appellate court), that sat on appeal in PC Matrimonial Appeal No. 13 of 2020. The appeal to the 1st appellate court arose from Matrimonial Cause No. 28 of 2019, instituted in Bugando Primary Court, at the instance of the respondent, for dissolution of their marriage; maintenance of the issues of the marriage; and division of matrimonial assets. It is the division of the matrimonial assets that raised an uproar by the appellant. Believing that the division was skewed in the respondent's favour, the appellant took an appeal

to the 1st appellate Court. The 1st appellate court partly allowed the appeal by altering the division of the assets. This saw the Geita house which was given to the respondent revert to the appellant, while the respondent bagged the Bugulula house. This decision did very little to appease the appellant. He mounted yet another challenge through the instant appeal, raising three grounds of appeal. For what will be apparent soon, I will not reproduce the grounds of appeal.

On 1st July, 2021, the matter was called for orders. The parties who were in attendance were ordered to have the appeal disposed by way of written submissions, the filing of which would conform to the schedule drawn by the Court. In terms of the said schedule, the appellant's submission was to be filed on 22nd July, 2021, followed by the respondent whose submission was set for filing on 5th August, 2021. Rejoinder, if any, fell due on 12th August, 2021. Strangely, however, by close of business on 12th August, 2021, and up until now, none of the parties has filed their respective submissions. Reasons for such inability have not been communicated to the Court, either.

Following the parties' failure to abide by the schedule, the Court's task is to deliberate on the course of action to be taken in the circumstances. This is not hard to find, because the law in that respect is settled. It is the effect that failure to file written submission, when ordered to do so, amounts to

the party's relinquishment of the right and opportunity to address the Court on what is before it. Where the matter at stake is an appeal, as is the case here, the consequence is to have the appeal dismissed for want of prosecution. This authoritative position has been emphasized in numerous court decisions. They include: ***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 ***Geofrey Kimbe v. Peter Ngonyani***, CAT-Civil Appeal No. 41 of 2014 (DSM-unreported).

In the case of ***National Insurance Corporation of (T) Ltd & Another v. Shengena Ltd***, CAT-Civil Application No. 20 of 2007 (DSM-unreported), the Court of Appeal underscored this astute position in the following words:

"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 foregoing position served to fortify the decision that the Court made in ***P3525 LT Idahya Maganga Gregory v. Judge Advocate***

General, Court Martial Criminal Appeal No. 2 of 2002 (unreported), wherein it was held:

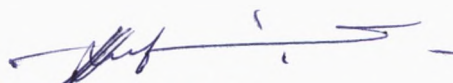
"It is now settled in our jurisprudence that the practice of filing written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequence of failure to file written submissions 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."

The underscored position captures what awaits this appeal. It is that this appeal must be dismissed as I hereby order. I make no order as to costs.

It is so ordered.

DATED at **MWANZA** this 19th day of August, 2021.




M.K. ISMAIL
JUDGE