

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

CIVIL APPEAL NO. 2 OF 2014

(Arising from Civil Case No. 4 of 2006 originating from the District Court of Serengeti at Serengeti)

SAMSON IBRAHIM APPELLANT

VERSUS

KIHENGO MSOSO 1ST RESPONDENT

MUGESI TEHATA 2ND RESPONDENT

CHACHA MASIAGA 3RD RESPONDENT

MUSETI MSOSO 4TH RESPONDENT

RULING

22nd July, & 25th August, 2021

ISMAIL, J.

This appeal has been taken at the instance of the appellant, challenging the decision of the District Court of Serengeti at Serengeti, in respect of Civil Case No. 4 of 2006. The appellant, who featured as the plaintiff in the trial proceedings, won the contest in which the respondents were ordered to pay compensation for the injury they alleged inflicted on the

appellant. This decision bemused the appellant. He felt that the trial court's decision was flawed.

When the parties entered a virtual appearance on 22nd July, 2021, an order was made to the effect that the parties should dispose of the appeal by way of written submissions. In terms of the schedule, the appellant was to file his written submission on or before 4th August, 2021. Up until the close of business on that date, and until now, no submission was filed.

Besides denying the respondents an opportunity to field their replies to what would be the arguments in support of the appeal, such failure is not without any consequences. The settled law in respect of such failure has been expounded in several decisions of this Court and the Court of appeal of Tanzania. The epic of all these is the decision in ***National Insurance Corporation of (T) Ltd & Another v. Shengena Ltd***, CAT-Civil Application No. 20 of 2007 (DSM-unreported). In that decision, 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 foregoing position was a reflection of what the Court postulated 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 ***Geofrey Kimbe v. Peter Ngonyani***, CAT-Civil Appeal No. 41 of 2014 (DSM-unreported).



It is in view of the foregoing decisions that this Court takes the view and hold that the appellant to prosecute the appeal. Consequently, I dismiss the appeal. I make no order as to costs.

Order accordingly.

DATED at **MWANZA** this 25th day of August, 2021.




M.K. ISMAIL
JUDGE