

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOBIA DISTRICT REGISTRY**

**MISC. LAND CASE APPLICATION NO. 90 OF 2020**

*(Arising from Miscellaneous Application No. 52 of 2020 and Misc. Land Case Appeal No. 50 of 2018, arising from Land Case Appeal No. 66 of 2017 of Bukoba DLHT and Original Civil Case No.9 of 2017 of Kishongo Ward Tribunal).*

**BURUHANI OMARI .....APPLICANT**

**VERSUS**

**VICTORIA REVELIAN ..... RESPONDENT**

**RULING**

**07/10/2021**

**NGIGWANA J,**

This omnibus application was brought under section 5(1) (c) of the Appellate Jurisdiction Act Cap 141 R: E 2019, and section 47 (2), (3) and (4) of the Land Disputes Courts Act Cap 216 R: E 2019 read together with rules 45 (a) and 46 (1) of the Tanzania Court of Appeal Rules, 2009 as amended by G.N No.362 of 2017 and GN No. 344 of 2019 and section 14(1) of the Law of Limitation Act Cap 89 R: E 2019. The same is supported by an affidavit sworn by the applicant. The prayers sought are as here under:-

1. Extension of time for leave to file certificate on point of law to the Court Appeal against the judgment of this Court (N. N. Kilekamajenga, J.) in Misc. Land Appeal No. 50/2018 delivered on 29/05/2020.

2. That, subject to granting extension time, the court be pleased to grant leave to appeal and certify that there are points of law in the intended appeal worth the consideration of the Court of Appeal of Tanzania.
3. Enlargement of time within which to apply for certified copy of decree given on 29/05/2020 and the whole proceedings in respect of the said case.
4. Costs be provided for.

Upon my arrival in this registry and upon the transfer of Hon. Mtulya J to another station, the case file was re-assigned to me.

On 18/08/2021 both parties appeared in person and unrepresented hence prayed to argue the application by way of written submissions, the prayer which was duly granted thus, the court scheduled the dates for filing the written submissions as follows; the applicant was to file the written submission in chief on or before 31/08/2021, the respondent was to file submission in reply on or before 14/09/2021 and the applicant was to file the rejoinder submission (if any) on or before 20/09/2021. The matter was scheduled for mention on 20/09/2021 for necessary orders.

A strange thing is that, there was no compliance of the Scheduling Order because no submissions filed as ordered more so from the Applicant. The reason advanced by the applicant for the non-compliance was sickness, though he presented no medical proof on that effect. The applicant asked for the extension of time within which to file the written submissions in

Chief. For the interest of justice, an extension of seven (7) days was granted. A new Scheduling order was prepared as follows;

1. Written submissions in chief to be filed on or before 27/10/2021.
2. Reply submissions to be filed on or before 04/10/2021.
3. Reply (if any) to be filed on or before 7/10/2021.

Again, the new scheduling order was not complied with by the parties more so the applicant. It is trite that the consequence of non-compliance with the court orders, in our case filing of written submissions have two folds; **One**, is the essence that has been equaled to hearing, and **two**, the essence that has been interpreted to amount to abuse of court process.

It is a principle of law that filing of written submissions is tantamount to a hearing, thus failure to file the submission as ordered by the court is equivalent to non-appearance at a hearing, and the consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend the case. In the case of **Fredrick Mutafungwa versus CRDB 1996 Ltd and others**, Land Case No.146 of 2004 CAT (Unreported) the Court held that;

*"Times and out of numbers, this court has held that the practice of filing submissions tantamount to a hearing and therefore failure to file submission has been linked to a non-appearance for want of prosecution"*

It was further held in the case of **Ms. Olympia Kowero versus Editor of the Express and three others**, Civil case No.176 of 2005 (Unreported) that

*"Where a party fails to file written submissions in compliance with a Scheduled Order, the consequence similar to those of failure to appear and prosecute or defend, as the case may be come into play".*

See further: **National Insurance Corporation of (T) Ltd & Another versus Shengena Ltd**, Civil Application No. 20 of 2007 and **Patson Matonya versus The Registrar Industrial Court of Tanzania & Another**, Civil Application No.90 of 2011).

As for non-compliance of the court orders the court held in the case of **TBL versus Edson Dhobe**, Misc. Application No. 96 of 2006 CAT (Unreported) that;

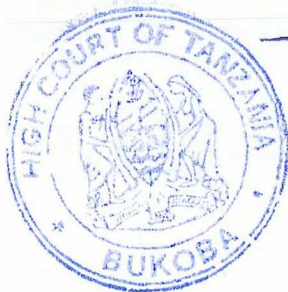
*"Court orders should be respected and complied with. The court should not condone such failures. To do so is to set a bad precedent and invite chaos. This should not be allowed to occur. Always court should exercise firm control over proceedings "*

In our case, if at all the applicant had the intention to prosecute this application, he should have filed the written submissions as per former court order but he failed do so, and as a result, he asked for the extension of time whereas he was given an extension of seven days but yet filed no written submissions within the seven days.

In my considered view, under the circumstances, the applicant's failure to file the written submissions as ordered by the Court means that he has failed to argue/prosecute the application and/or has ignored to do so.

In the light of the foregoing reasons, I dismiss the application with costs for want of prosecution.

Order accordingly.

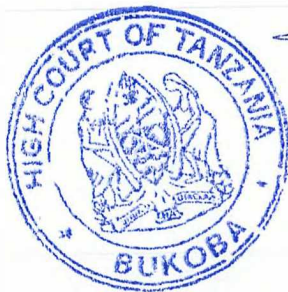


  
E. L. NGIGWANA

JUDGE

07/10/2021

Ruling delivered this 7<sup>th</sup> day of October, 2021 in the presence of the respondent in person Mr. E.M. Kamaleki, Judges' Law Assistant, Mr. Gozbert Rugaika, B/C but in the absence of the applicant.



  
E. L. NGIGWANA

JUDGE

07/10/2021