

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPEAL NO. 2 OF 2019**

(C/F Arusha District Land & Housing Tribunal, Misc. Application No. 385 of 2017  
originating from Engutoto Ward Tribunal Application No. BR/ENG/R/14/2015)

**CLEMENCE IPANDA (As Administrator**

**of the estate of the late YONA IPANDA) ..... APPELLANT**

**VERSUS**

**NASARY NATHANIEL MUSHI.....RESPONDENT**

**JUDGMENT**

16/3/2021 & 7/5/2021

**ROBERT, J:-**

The Appellant filed this appeal against the Ruling of the District Land and Housing Tribunal of Arusha in Misc. Application No. 385 of 2017 dated 15<sup>th</sup> August, 2018 striking out that application for reasons that parties to that application are strangers to the original proceedings at Engutoto Ward Tribunal in Application No. BR/ENG/R/14/2015 from which that application arose. Aggrieved, the Appellant herein preferred an appeal to this court challenging the decision of the District Land and Housing Tribunal.

Briefly, facts relevant to this appeal reveals that, the Respondent herein filed an application for enforcement of the decision of Engutoto Ward Tribunal as the Decree Holder against the Appellant herein as the Judgment Debtor in Misc. Application No. 385/2017 at the District Land and Housing Tribunal of Arusha. Prior to the determination of the said application on merit, the Hon. Chairman made an observation that records of the lower Tribunal indicates that parties in the original case before the lower Tribunal were Nasary Ngilisho Mushi as Complainant and Clement Gerald Ipanda in his personal capacity as Defendant whereas in the application before him the Judgment debtor was Nasary Nathanael Mushi and Clemence Ipanda (as administrator of estate of the late Yona Ipanda). The Hon. Chairman was of the view that the persons named in the decision sought to be enforced are different persons from the ones named in the application before him. Consequently, he decided to strike out the said application. Aggrieved, the Appellant herein who was the Judgment Debtor in that application, filed this appeal armed with four grounds of appeal which I take the liberty to reproduce as follows:

- 1. That the Arusha District Land and Housing Tribunal (Hon. F. Mdachi, Chairman) erred on point of law and fact in failing to give appropriate orders after striking out Respondent's application for execution of the decision of Engutoto Ward Tribunal.*

2. *That the Arusha District Land and Housing Tribunal (Honourable F. Mdachi Chairman) erred on point of law and fact in not nullifying the improper proceedings and decision of the Engutoto Ward Tribunal for the reason that the Engutoto Ward Tribunal was not well constituted as per section 11 of the Land Disputes Courts Act, No. 2 of 2002 and for having contravened section 4(2) of the Ward Tribunal Act, Cap 206 (R.E.2002)*
3. *That the Arusha District Land and Housing Tribunal (Hon. F. Mdachi, Chairman) erred on point of law and fact in failing to grasp that the trial Ward Tribunal did not conduct any hearing of the matter because no witnesses adduced any evidence at the trial and the Appellant was not afforded an opportunity to be heard hence was condemned unheard.*
4. *That the Arusha District Land and Housing Tribunal (Hon. F. Mdachi) erred on point of law and fact in that he imported hypothetical names of parties who did not feature at the hearing of the matter at Engutoto Ward Tribunal.*

When this matter came up for hearing both parties were present in person without representation. At the request of parties, the Court ordered the appeal to be argued by way of written submissions and proceeded to schedule the filing of written submissions whereby the Appellant's written submissions were required to be filed on or before the 7<sup>th</sup> day of December, 2020. The Respondent's submissions were ordered to be filed on 21/12/2020 and the rejoinder submissions, if any, were required to be filed on or before 28/12/2020.

The Appellant filed his written submissions on 8/12/2020 which is out of the date scheduled for filing of his written submissions whereas the Respondent filed his written submissions on 22/12/2020 and addressed the court on one concern only that, the written submissions filed by the Appellant did not adhere to the scheduled orders in filing written submissions.

The Respondent argued that the Appellant's failure to submit his written submissions according to the scheduled orders is the same as non-appearance on the date fixed for hearing. On what is the consequence of late filing of written submissions, he referred the Court to the cases of **Abisai Damson Kidumba vs Anna N. Chungu & 3 Others**, Land Application No. 43 of 2020 (Unreported) and **P3525LT Idaya Maganga Gregory vs The Judge Advocate General**, Court Martial Criminal Appeal No. 2 of 2002 (Unreported) where it was decided to the effect that failure to file written submissions on the dates scheduled by the Court without leave of the court is as good as non-appearance on the date fixed for hearing and case is bound to face a dismissal for want of prosecution. For reasons thereof, he prayed for this appeal to be dismissed with costs.

The Respondent did not file rejoinder submissions.

In the present matter, records indicate that on 23<sup>rd</sup> November, 2020 when this court gave an order for filing of written submissions both parties were present in person. The Appellant was ordered to file his written submissions on or before 7/12/2020 which he failed to comply with instead he filed his submissions on 8/12/2020 without obtaining leave of this court. The alleged delay having been raised as an issue in reply submissions the Appellant opted to remain silent by choosing not to file rejoinder submissions. In the circumstances, the Court finds that the Appellant failed to file his written submissions within the time prescribed by the Court without any lawful justification or leave of this court. Consequently, I dismiss this application with costs for want of prosecution.

It is so ordered.

  
K.N. ROBERT  
JUDGE  
7/5/2021  


