

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

MISC CIVIL APPLICATION NO. 59 OF 2021

(C/f Taxation Cause No. 35 of 2018 and DC Civil Appeal No. 20 of 2017 at the High Court of Tanzania, Arusha District Registry, Originating from Civil Case No. 6 of 2016 at the District Court of Karatu)

AMSI SHAURI.....APPLICANT

Vs

BILAURI BUGHE @ABDALLAH BUGHE.....RESPONDENT

RULING

Date of last Order:16 -5-2022

Date of Ruling:13-6-2022

B.K.PHILLIP,J

This Ruling is in respect of an application for stay of execution made under the provisions of section 95, Order XXI Rule 27 and Order XXXIX Rule 5 (1) of the Civil Procedure Code (Cap 33. R.E. 2019). The applicant prays for the following orders;

- i) That this Honourable Court be pleased to stay the execution of the Ruling/Orders made by the taxing master in Taxation Cause No. 35 of 2018 pending hearing and determination of the application for Review registered as Civil Revision No. 3 of 2021.*
- ii) Any other Order(s) as this Honourable Court shall deem fit to grant.*

The application is supported by an affidavit sworn by the applicant's representative Mr. Aloyce Nayeda Kirway, holder of a power of Attorney issued by the applicant duly signed, registered and filed in Court. The Respondent filed a Counter affidavit in opposition to the application.

Mr. Aloyce Nayeda Kirway appeared in person on behalf of the applicant and the learned Advocate Mr. Gwakisa Kakusulo Sambo appeared for the respondent. I ordered the application to be argued by way of written submissions following the prayer made by Mr. Aloyce Nayeda Kirway. The schedule for filing the written submissions was as follows;

- i) The applicant's submission in support of the application to be filed on or before 7/4/2022.
- ii) The respondent's submission to be filed on or before 29/4/2022.
- iii) Rejoinder if any, by the applicant to be filed on or before 16/5/2022.

Both the applicant and the advocate for the respondent filed their written submissions. However, before dealing with the submissions on the merit of this application, I am compelled to start dealing with the preliminary issue/concern raised by the learned Advocate Gwakisa Sambo, to wit; That the applicant's submission has been filed out of time without the leave of this Court. He contended that the applicant's submission was filed in Court on 8/4/2022 instead of 7/4/2022 as ordered by this Court. Mr. Sambo argued that the applicant's failure to file his submission within the time ordered by this Court is fatal. The submission filed out of time

without seeking and obtaining extension of time to file it out of time should not be considered. Mr. Sambo prayed for the dismissal of this application with costs for failure of prosecution. To cement his arguments he referred this Court to the case of **Mariam Shomvi Vs Laurent Kiyenze, Misc land Application No.492 of 2020**, (unreported), in which this Court (Hon Maghimbi, J) held that "*failure to file submissions on time is tantamount to waiving right to be heard or failing to appear on the date the matter is scheduled for hearing. The consequence is the same and it is nothing but dismissal of the matter*".

Mr. Aloyce Nayeda Kirway did not make any rejoinder to his submission in chief.

I have perused the Court's records and as correctly submitted by Mr. Sambo , I noted that the applicant's submission has been filed out of time without the leave of this Court. The same was filed on 8/4/2022 instead of 7/4/2022 as ordered by this Court. No leave of this Court was sought to file the submission out of time. Under the circumstances I am compelled to expunge from the Court's records the written submission filed by Mr. Aloyce Nayeda Kirway out of time without the leave of this Court. Thus, the applicant's written submission is hereby expunged from the Court's records. I wish to point out that Court orders have to be adhered to, otherwise the administration of justice will end up being chaotic. I entirely associate myself with the observations made by this Court in the case of **Mariam Shomvi** (supra) which is in line with observations made by the Court of Appeal in the case **National Insurance Corporation of**

**(T) Ltd and another Vs Shengena Ltd , Civil Appeal No.20 of 2007
(CA) (unreported),** in which the Court said as follows;

".....The applicant did not file submission on due date as ordered. Naturally, the Court cannot be made impotent by a party's inaction. It had to act.....it is a trite law that failure to file submission(s) is tantamount to failure to prosecute one's case.

From the foregoing, I hereby dismiss this application with costs for failure of prosecution.

Dated this 13th day of June 2022



B.K.PHILLIP

JUDGE