

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 18 OF 2022

(Originating from Resident Magistrate Court of Dar es Salaam at Kisutu Civil Case
No. 33 of 2020)

JUNIOR CONSTRUCTION COMPANY..... APPLICANT

VERSUS

ALMANIAH HEAVY EQUIPMENT.....RESPONDENT

RULING

MRUMA,J

When this matter was called for hearing on 27.4.2022 Mr. Katikiro, advocate who appeared for the Applicant pray the court to allow the application to be argued by way of written submission and suggested that he would be able to file his respective submission in seven days' time.

Counsel for the Respondent, Mr Mramba had no objection to the proposal. Following his concession court made a schedule for the parties to file their submissions.

Counsel for the Applicant was ordered to file his submissions on or before 4th May 2022. He did not file them as ordered, instead he filed his

submissions on 5th May 2022. No leave was sought and granted for filing the said submission outside the schedule suggested by the Applicant's counsel himself and adopted by the court. It is trite law that failure to file written submissions in proceedings where hearing is being conducted by way of written submission is as good as failure to prosecute's one's case. Under Rule 21(a) of Order VIII of the Civil Procedure Code (as amended by GN No. 381 of 2019), where a party fails to comply with any of the direction of the court and where a party so failed is the plaintiff court may dismiss the suit. The wording of the law "*any direction of the Court*" is inclusive which means any order or direction given by the court.

In the case at hand the Applicant (who is occupying the same position as a plaintiff had this being a suit) was ordered to file his submissions on or before 4th May 2022. He didn't file the same as ordered. That constitutes failure to comply with directions of the court envisaged by Rule 21(a). That being the case taking into account that this is an application for extension of time within which the Applicant would file an appeal against a judgment which was delivered on 7th June 2021 but the Application was filed on 11th January 2022, I think this a fit case for the court to exercise its discretion Judiciary by dismissing it.

Accordingly Miscellaneous Civil Application No.18 of 2022 is dismissed with costs of the Respondent.




A. R. Mruma

Judge

31/5/2022