

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**LAND APPEAL NO. 31 OF 2020**

**JUMA MOHAMED BULALI..... APPEALANT**

**VERSUS**

**SINGIDA MUNICIPAL COUNCIL }  
KANISA LA MUNGU SINGIDA }.....RESPONDENTS**

**(Arising from the decision of Singida District Land and Housing Tribunal)**

**(E.F. Sululu-Chairman)**

**Dated 21<sup>st</sup> February, 2020**

**In**

**Land Application No.04/2019**

.....  
**JUDGMENT**

**09<sup>th</sup>May&24<sup>th</sup>June,2022**

**MDEMU, J:.**

The Appellant one Juma Mohamed Bulali was dissatisfied with the decision of the District Land and Housing Tribunal for Singida (the DLHT), in Land Application No. 4 of 2019. The DLHT declared the Appellant herein a trespasser. The 2<sup>nd</sup> Respondent was declared the rightful owner of the Suitland. He lodged this appeal on 3<sup>rd</sup> of April, 2020. The Respondents filed their reply disputing the appeal and prayed this Court to dismiss it with costs.

On 9<sup>th</sup> May, 2022, the appeal was scheduled for hearing. Mr. Mahenge, learned Principal State Attorney represented the first

Respondent and Mr. Francis Kesanta, learned Advocate appeared for the 2<sup>nd</sup> Respondent. The Appellant was unrepresented. He appeared in person. It was agreed to dispose the appeal by way of written submissions. According to the order, the Appellant was to file his written submissions on or before 23<sup>rd</sup> May, 2022. The First Respondent conceded to the appeal and therefore waived to file written submissions. The second Respondent was required to file his reply on or before 6<sup>th</sup> of June, 2022. The rejoinder, if any, by the Appellant, was to be on or before 13<sup>th</sup> of June, 2022.

The Appellant didn't comply to the scheduling order as by 23<sup>rd</sup> May 2022, no any written submissions was ever filed. To the contrary, belatedly though, on 24<sup>th</sup> May, 2022 the Appellant filed a document titled "HATI YA MARIDHIANO (DEED OF SETTLEMENT AND COMPROMISE OF SUIT). It was served to the Respondent.

Mr. Kesanta. Learned Advocate on his part on 1<sup>st</sup> June, 2022 wrote to the Deputy Registrar a letter with Ref. No. *RCA/LAND APP/31/2022* dated 1<sup>st</sup> of June, 2022 having the following title "*RE: DISMISSAL OF APPEAL FOR FAIL TO FILE WRITTEN SUBMISSION IN LAND APPEAL NO. 31 OF 2020*". In that letter, he stated that, the Appellant defaulted to file his written submissions as ordered by the court and what was belatedly filed was "*Hati ya Maridhiano* (Deed of settlement and compromise of the

suit)" which is not written submissions. He therefore prayed this Court to dismiss the appeal by citing the case of **Ahmed M. S Shabiby vs. Architects and Quantity Surveyors Registration Board, DC. Civil Appeal No. 12 of 2003** (unreported) for failure to prosecute the appeal.

On the foregoing actions of the parties, the settled position of the law is that, failure to file written submissions, when ordered to do so, constitutes waiver of the party's right to be heard and prosecute his matter. This was the position of the Court of Appeal in **National Insurance Corporation of (T) Ltd and Another v. Shengena Ltd, Civil Application No. 20 of 2007** (unreported) where it was held that:

*"The Applicant did not file submission on due date as ordered. Naturally, the Court could not be made impotent by party's inaction.....it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case" (emphasis supplied)*

The above position was also stated in the case of **Patson Matonya v. The Registrar, Industrial Court of Tanzania and Another, Civil Application No. 90 of 2011** (unreported) and **Tanzania Harbours Authority v. Mohamed R. Mohamed (2002) TLR 76** that, filing written submissions are tantamount to a hearing and therefore, failure to do so as ordered is equivalent to nonappearance at a hearing. Its

consequences are similar to those of failure to appear and prosecute or defend, as the case may be. That being the law, it is conceived that, the Appellant has failed to prosecute his appeal.

Even if the Appellant would have complied with the scheduling order, yet what he filed was a deed of settlement and not in response to his grounds of appeal, thus contravened the order of this Court. Deed of settlement may not be prepared and deposited in court without consensus by both parties to a case. In the circumstances of this case, and as parties were in court, then the record of the court should have so provided to allow parties to file their deed of settlement.

In essence, court's order should be respected and must be complied with. Doing to the contrary invites chaos in Court as was stated in the case of **Tanzania Breweries Ltd v. Edson Dhobe and 19 Others, Misc. Civil Application No. 96 of 200** (unreported) and **Micky Gilead Ndetura (A minor suing through Gilead Ndetura Lembai, A next friend) v. Exim Bank (T) Ltd, Commercial case No. 4 of 2014** (unreported).

I should comment one thing on the actions of the Advocate of the 2<sup>nd</sup> Respondent to inform the Deputy Registrar on non-compliance of orders of the court to file written submissions. Order of the court to disposal an action in court, an appeal in this case, by way of written

submissions, is not an administrative action to be attended by the Deputy Registrar. That was a judicial process to be directed to the presiding judge. The duty of the Counsel for the 2<sup>nd</sup> Respondent under the circumstances was to comment on the deed of settlement so filed, whether or not in time. He would have thereafter stated the consequence of so doing to the merits of the appeal as he thinks plausible.

In event that the deed of settlement was filed in time in compliance with the court's order to file written submissions, then a letter of the learned counsel directed to the Deputy Registrar was not a judicial proceeding in judicial process in disposing an appeal by way of written submissions. In fact, the learned counsel would have defaulted to file a reply to the written submissions. The consequence remains the same, and now to the Respondent, the appeal would have been determined ex-parte by his failure to file reply to the Appellant's written submissions.

That said and done, I find that the Appellant's act of not filing his written submissions pursuant to the order of this Court dated 09<sup>th</sup> May, 2022 implies failure to prosecute his appeal. The appeal is hereby dismissed with costs.

It is so ordered.



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**Gerson J. Mdemu**  
**JUDGE**  
**24/06/2022**

**DATED at DODOMA** this 24<sup>th</sup> day of June, 2022



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**Gerson J. Mdemu**  
**JUDGE**  
**24/06 /2022**