

Admittedly, this is a backlog petition, it was filed on 27th August, 2021.

I see no justification of letting it pending in this court.

For those reasons, I order that this application be dismissed with no order as to costs.

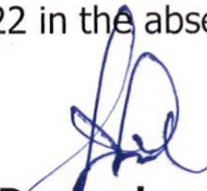
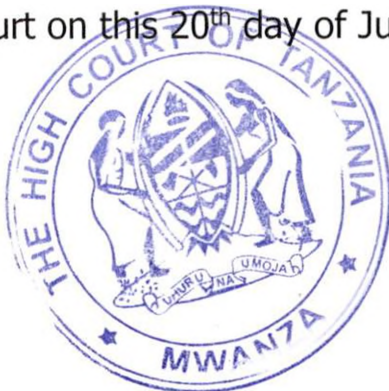


W.P. Dyansobera

Judge

20.7.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 20th day of July, 2022 in the absence of the parties.



W.P. Dyansobera

Judge

“It is now settled in our jurisprudence that the practice of filing written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. Court decision on the subject matter is bound...Similarly, courts have not been soft with litigants who fail to comply with the court orders, including failure to file written submissions within the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records and are to be disregarded”

In the instant matter, the written submissions have not been filed in time but also have not been filed at all. In the light of the above holding by the Court of Appeal, these preliminary objections are struck out.

In the same vein, since the petitioner has not availed himself to prosecute his petition and there is no explanation on that failure, it should be taken that he has lost interest in prosecuting his petition.

1. The 1st respondent to file his written submission in chief by
29.6.2022
2. The applicant to file a written reply by 6.7.2022
3. The 1st respondent to file a written rejoinder, if any, by
13.7.2022
4. The matter to come up for necessary orders on 13.7.2022

On 13th day of July, 2022, parties and their respective advocates were absent and no any written submission was in place. The matter was, consequently set today for delivery of the ruling.

In view of fact there is no any document filed by the parties and/ or their respective advocates and no explanation for the failure, the court is constrained to determine the matter.

The issue is what the consequence is for the parties' failure to file the submissions as prayed for by their learned advocate. There is no dispute that the preliminary objections were raised by the 1st respondent. Her failure to file her written submission amounts to a non-appearance. This position was elaborated by the by the Court of Appeal in the case of **P3525 LT Idahya Maganga Gregory v. The Judge Advocate General**, Court Martial Criminal Appeal No.2 of 2002(unreported) in the following terms: -

2. That the petition is incompetent for failure by the petitioner to obtain leave of the court to institute the petition as required by law
3. That the petition is premature for failure of the petitioner to exhaust company's internal mechanism to resolve the internal disputes
4. That the relief sought is not tenable in law.

The 1st respondent, therefore, prayed that the petition be struck out with cost.

On 22nd day of June, 2022 when the matter was called for hearing the preliminary objections, Mr. Chama Matata, learned Advocate who appeared for the respondents informed this court that the applicant was represented by an advocate who had informed him (Mr. Chama Matata) that he is indisposed. He apprised the court that they were suggesting that the preliminary objection be argued by way of written submissions and proposed seven days for each party to file their respective written submissions and three days for the respondent to file a rejoinder. This court acceded to their request and set a time frame as follows: -

- c) An order that the petitioner be paid his shares of the profit from the date of incorporation of the company
- d) An order to remove the 1st respondent as a director of the Company
- e) An order appointing a competent auditor/inspector to audit/investigate the affairs of the Company in respect of accounting the period from 1998 to 2021 and report the same to court.
- f) An order that the 1st respondent has not been acting honestly and in good faith in relation to the running of the affairs of the Company
- g) An order that the 1st respondent pay the petitioner costs of and incidental to the petition.
- h) Any other relief (s) that the Honourable court may deem fit to grant

The 1st respondent resisted the petition by filing a notice of preliminary objections on the following points:-

1. That the petition is time barred

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA
MISCELLANEOUS CIVIL CAUSE NO. 8 OF 2021
IN THE MATTER OF COMPANIES ACT [CAP. 212 R.E 2002]
AND
IN THE MATTER OF A PETITION FOR ORDERS
IN RESPECT OF M/S VICTORIA BUREAU DE CHANGE LIMITED
BETWEEN**

**KHASSIM MNYONGE.....PETITIONER
VERSUS
RAMLA SAID.....1ST RESPONDENT
M/S VICTORIA BUREAU DE CHANGE LIMITED.....2ND RESPONDENT**

RULING

13th & 20th July, 2022

DYANSOBERA, J.:

The applicant Khassim Mnyonge has filed this petition under section 233 (1) of the Companies Act [Cap. 212 R.E. 2002] seeking the following orders: -

- a) A declaration that the company affairs have been conducted by the 1st respondent in a manner which is unfairly prejudicial to the interest of the petitioner
- b) An declaration that the 1st respondent with intent to defraud the petitioner has been mining in the company in a manner which is oppressive to the petitioner