

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**MISC. LABOUR APPLICATION NO. 26 OF 2021**

*(Arising from Labour Execution No. 50 of 2020 and originating from CMA.TAN/41/2020)*

**ECKERNFORD EDUCATION INSTITUTE LIMITED.....APPLICANT**

**-VERSUS-**

**SMITH J. LEMA.....1<sup>st</sup> RESPONDENT**

**ECKENFORDE TANGA UNIVERSITY.....2<sup>nd</sup> RESPONDENT**

**BOUNCE TRADERS COMPANY.....3<sup>rd</sup> RESPONDENT**

**RULING**

*Date of Last Order: 16/06/2022*

*Date of Ruling: 12/07/2022*

**AGATHO, J.:**

The Applicant in the present Application seeks an order for stay of execution. The Application was presented by way of Chamber Summons made under Order XX Rule 57 of the Civil Procedure [Cap 33 R.E 2019] and Supported by an Affidavit deponed by EMANUEL REMENCY TARIMO.

From two documents presented I observed two things which are fatal. Starting with enabling provision, this application brought under non existing provision. The Applicant brought his Application under Order XX Rule 57 of the Civil Procedure Code [CAP 33 R.E. 2019]. Second defect is

on the affidavit Applicant present Affidavit which is not attested. Reading Order XX of the Civil Procedure Code Act ends with Rule 21 and Applicant managed to cite Order XX Rule 57 I can say he cited non existing law which is not allowed in our System of Justice. In the case of **Abdul Aziz Suleiman vs. Nyaki Farmers Cooperative Ltd and Another (1966) EA 409**, East Africa Court of Appeal had this to say

*"The applicant is required to cite the relevant provision from which the Court derives power to hear and determine the application".*

Along that it was stated in **EDWARD BACHWA AND 3 OTHERS Vs THE ATTORNEY GENERAL AND ANOTHER, CIVIL APPLICATION NO. 128 OF 2006 (CAT-DSM) (Unreported)** that,

*"Wrong citation of the law, section, subsections and/ or paragraphs of the law or non-citation of the law will not move the court to do what it is asked and renders the application incompetent".*

Before going further, the application is incompetent for citing wrong provision of the law as well the Affidavit is defective. This application is not recognized under the umbrella of justice.

The application which was scheduled to heard by way of written submission as ordered on 21<sup>st</sup> April 2022. The Applicant required to file his submission on or before 16<sup>th</sup> May 2022, Respondent's Reply on or before 30<sup>th</sup> May 2022 rejoinder on or before 6<sup>th</sup> June, 2022 and Ruling on 16<sup>th</sup> June 2022.

The Applicant did not file his submission instead filed a letter on 6<sup>th</sup> July 2022 as informing this court on their failure and asked for extension of time to reschedule and giving a room the applicant to file his submission. The first Respondent filed his notice of default for the purpose of informing this court on the failure of the Applicant to file her written submission and therefore he has no submission to reply to.

It is very clear that failure to file written submission is like non-appearance on the hearing date or failure to prosecute case. In the case of **Monica d/o Dickson vs. Hussein J. Wasuha (Kwa niaba ya chama cha Wafanyabiashara) P.C. Civil Appeal No. 4 of 2019 (HC at Mbeya Registry, unreported)**, where it was held that *failure to file written submission constitute want of prosecution*.

Also in the case of **Harold Maleko Vs Harry Mwasanjala, DC Civil Appeal No. 16 of 2000 (HC- Mbeya, unreported)**, where Makanja, J (as he then was) stated;

*" I hold therefore that the failure to file written submission within the time prescribed by the court was inexcusable and amounted to failure to prosecute the appeal....."*

Despite the above position, this Court can in certain circumstances such as where there is a good cause grant more time and reschedule the submission dates. Nevertheless, what has been stated in the letter presented by Advocate Debora Msaki does not suffices to do so. This Court cannot be moved by a mere letter. Although she complained that her client was involved in a critical searched by NSSF she did not provide any evidence to that effect. Moreover, it is my view that making a follow up to the Advocate to see whether he prepared and filed written submissions could not have been hindered by the said search. The Applicant had time and chance to change the Advocate before the expiry of time set by the Court for filing the written submissions. I take it as the negligence on the part of Applicant. As it was stated in the case of **LIM MAN YUNG & LIMTRADING COMPANY LTD VS. LUCY TRESEAS KRISTENSEN** Civil Appeal No. 219 of 2019 Court of Appeal of Tanzania at Dar es Salaam at page 22,

*"We think that a party to a case who engages the services of an advocate, has a duty to closely follow up the progress and status of his case. A party who dumps his*

*case to an advocate and does not make any follow ups of his case, cannot be heard complaining that he did not know and was not informed by his advocate the progress and status of his case."*

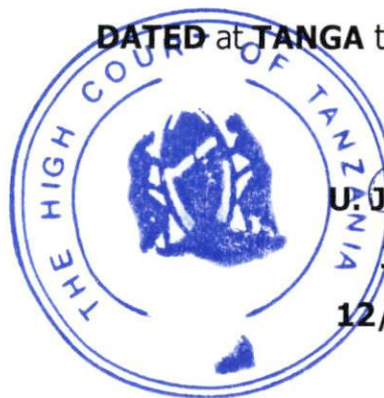
It must be clear that court of law are not there to aid persons who delay ends of litigation or those who use court of law to hide their interest as stated in the case of **Tanzania Harbors Authority V. Mohamed [2002] TLR 76** where the court comment that:

*"The court dully bound to make sure that rules of the Court are observed strictly and cannot aid any party who deliberately commit lapse."*

In the end I am of settled view that this Application qualifies to be dismissed for want of prosecution and having unattested Affidavit and citing wrong provision of the law. The application is dismissed. Since this is the labour matter no order as to costs is given.

It is so ordered.

**DATED** at **TANGA** this 12<sup>th</sup> Day of July 2022.



*[Handwritten Signature]*  
**U. J. AGATHO**  
**JUDGE**  
**12/07/2022**

**Date: 12/07/2022**

Coram: Hon. Agatho, J

Applicant: Absent

1<sup>st</sup> Respondent: Present

B/C: Zayumba

**Court:** Ruling delivered on this 12<sup>th</sup> day of July, 2022 in the presence of 1<sup>st</sup> the Respondent.

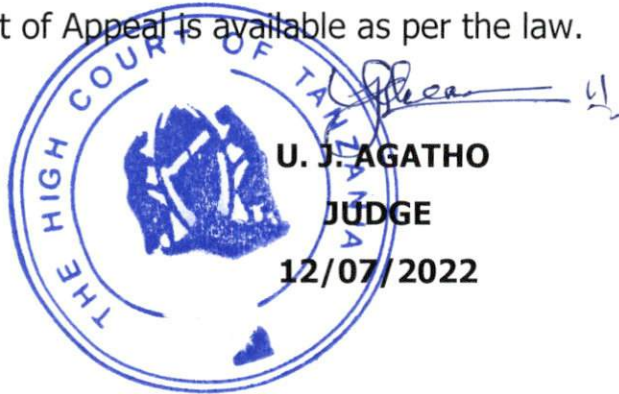


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**JUDGE**

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**Court:** Right of Appeal is available as per the law.



**U. J. AGATHO**

**JUDGE**

**12/07/2022**