

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPEAL NO. 41 OF 2021

(From the District Land and Housing Tribunal for Mbeya, at Mbeya in Land Appeal No. 206 of 2020, Originated in Land Cause No. 85 of 2020 in Ilembo Ward Tribunal.)

ESTA MATEO..... APPELLANT

VERSUS

PATSON K. MWASENGA..... RESPONDENT

ORDER

Date of Last Order: 30.06.2022

Date of Decision: 15.07.2022

Ebrahim, J.

The appellant ESTA MATEO is challenging the decision of the District Land and Housing Tribunal for Mbeya, at Mbeya (the District Tribunal) in Land Appeal No. 206 of 2020 from the judgment dated 17/08/2021. The dispute originated in Ilembo Ward Tribunal (Ward Tribunal) in Mbeya District where the Appellant, sued Patson K. Mwasenga, (the Respondent) for a piece of a farm. The Ward Tribunal decided in favour of the Appellant.

Dissatisfied by the decision the Respondent appealed to the District Land and Housing Tribunal. The Tribunal reversed the decision of the Ward Tribunal where the Respondent was declared owner of the suit farm. Aggrieved, the Appellant instituted the instant appeal. For the reason to be apparent, I will not reproduce grounds of appeal.

When the appeal came for hearing on 10th day of May, 2022 the Appellant appeared in person without legal representation, whereas advocate Osiah Adam represented the Respondent. This Court ordered the appeal to be disposed of by way of written submissions, and set a schedule thereof.

On 30th Day of June, 2022 when the matter came up for ascertaining the compliance of the scheduling order, no written submissions were filed in court. The Respondent's counsel notified this court that they did not file their reply since they were not served with written submissions in chief. Respondent's counsel also told this Court that failure to file written submission amounts to non-appearance. He thus urged this Court to dismiss the appeal for want of prosecution with costs.

Indeed, the Appellant did not file her written submissions in chief. She did not also appear before this Court on 30th day of June, 2022 to show cause on her default. As correctly said by counsel for the Respondent, it is trite law that failure by a party to court proceedings to file written submissions as ordered by the court amounts to failure to appear for hearing. This position was held by this Court in the case of **Olam Tanzania Limited v. Halawa Kwilaby**, Civil Appeal No. 17 of 1999, HCT at Mbeya (unreported). The Court of Appeal of Tanzania also underscored the same in the case of **National Bank of Commerce (NBC) Limited vs Sao Ligo Holdings Limited and Another**, Civil Application No. 267 of 2015 CAT at Dar es Salaam (unreported). In the circumstances, the only legal remedy for the omission committed by the Applicant is none other than dismissing the appeal with costs.

I therefore, dismiss the appeal for want of prosecution with costs.

Ordered accordingly.



Mbeya
14.07.2022

A handwritten signature in blue ink, appearing to read "R.A. Ebrahim".

R.A. Ebrahim
JUDGE

Date: 15.07.2022.

Coram: Hon. A.P. Scout, Ag-DR.

Appellant: }
Respondent: } Absent.

For the Respondent: Mr. Osiah Adv.

B/C: Patrick Nundwe.

Mr. Osiah Advocate for the Respondent who is absent and the appellant is absent.

The matter is coming on for judgement I am ready to proceed.

Court: Order is delivered in the presence of Mr. Osiah Advocate for the respondent with the absent of the appellant, Court Clerk in Chamber Court on 15/07/2022.



A.P. Scout

Ag-Deputy Registrar

15.07.2022

**DEPUTY REGISTRAR
HIGH COURT OF TANZANIA
MBEYA**