

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI
LAND APPEAL NO.39 OF 2021**

*(C/f Application No. 158 of 2021-District Land and Housing Tribunal for
Moshi at Moshi)*

JONATHAN SHEDRACK LYIMO APPELLANT

VERSUS

ALEX MAKOMBO..... 1ST RESPONDENT

MASHIMA SACCOS LTD.....2ND RESPONDENT

TANFIN CONSULTANT EA LTD.....3RD RESPONDENT

26/8/2022

RULING

T. M. MWENEMPAZI, J

The appellant filed this appeal on the 8th October, 2021 purporting to be aggrieved by the decision of the District Land and Housing Tribunal for Moshi (Hon. J. Sillas, Chairman) dated 24th August, 2021. In the impugned decision No. 158/2021, which had been filed by the 1st Respondent and dismissed, the Hon. Chairman observed that the impugned application had nothing to be determined by the tribunal. The order also dismissed miscellaneous Application No 356 of 2021

As a matter of procedure, in this court the appeal stayed without hearing awaiting the original file to be brought to the High Court. The same was brought on the 8th March, 2022 and that is the date the appeal was ready

for hearing. Due to various reasons advanced by the appellant or his advocate, the hearing of the appeal was adjourned several times due to reasons and or excuses advanced by the appellant or his counsel. It was adjourned on 26/5/2022, 9/6/2022 and 19/7/2022 when I decided to give the appellant time to consult his lawyer as to whether the appeal can be heard by way of written submission. After sometime or a few minutes later the appellant came in court verifying that his advocate is comfortable to proceed with hearing of an appeal by way of written submission. Thus, a scheduling order was made on the 19th July, 2022.

The record shows the appellant was scheduled to file written submission in support of an appeal on or before 2/8/2022. The respondent to file reply submission on or before 16/5/2022 and rejoinder if any to be filed by the appellant on or before 23/8/2022. The matter was scheduled to be called for mention on the 25/8/2022 to see if parties have complied with the order of the court.

When the matter was called on for mention on the 25/8/2022, the appellant was absent. However, Mr. Emmanuel Mlaki, Advocate and the counsel for the appellant was present and Mr. Tumaini Materu Advocate for the Respondent was present together with his client, the Respondent.

This time around the counsel for the appellant, Mr. Emmanuel Mlaki Advocate came with an excuse that he could not file a written submission due to sickness. That he was hospitalized. However, no evidence was tendered. He prayed that he be given more time to file written submission in support of an appeal. The prayer was opposed by Mr. Tumaini Materu Advocate for the respondent, who informed this court that after they had

made follow up for a written submission by the appellant according to the schedule, they found no written submission had been filed. He also took trouble to call the counsel for the appellant who told them that he has given the written submission to his client. The counsel for the respondent therefore filed a written submission on behalf of the respondent praying for an order that the appeal be dismissed for want of prosecution.

In its discretion the court made an order for *viva voce* hearing on the 26/8/2022 at 8:30 a.m. That order was made in the presence of parties as stated herein above. Today, at 8:30 a.m. Mr. Emmanuel Malaki Advocate did not enter appearance and no notice of the reason of his non-appearance was filed or brought anyhow in court. The counsel for the respondent prayed that the appeal be dismissed with cost for want of prosecution.

According to the case of **DATA MACHINES LIMITED VS MOHAMED HASSANALI KANJI**, Land Case No. 286 of 2005, High Court of Tanzania, Land Division at Dar es Salaam (unreported), where the Court held that: -

"Times out of number this court has held that the practice of filing submissions amounts/or is equivalent to a hearing. That being so, failure to file the same as ordered and agreed amounts to non-appearance or failure to prosecute."

It is my observation that, the counsel for the appellant is not serious inferring from the way he has handled this appeal. For whatever reasons, he seems to be either afraid to prosecute the case or he has another reason not disclosed. In anyway, he should have at least not wasted time and resources of the court, if at all he was not ready to proceed.

Albeit, I am left with no other option but to dismiss this appeal for want of prosecution with costs. it is ordered accordingly.

Dated and delivered at Moshi this 26th August, 2022.



T. M. Mwenempazi
T. M. MWENEMPAZI

JUDGE

Ruling delivered in court this 26th August, 2022 at 2:00 p.m. in the presence of Mr. Tumaini Materu, Advocate for the respondent.

T. M. Mwenempazi
T. M. MWENEMPAZI
JUDGE