

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISC. CIVIL APPLICATION NO. 5 OF 2022.

**(From Civil Appeal No. 10 of 2019, in the High Court of Tanzania,
at Iringa, Original Civil Case No. 31 of 2014, in the District Court
of Iringa District, at Iringa).**

BETWEEN

BAHATI MATIMBA.....APPLICANT

VERSUS

JAGRO ENTERPRISES LIMITED..... RESPONDENT

RULING

19th July & 06th October, 2022.

UTAMWA, J.

The applicant herein, BAHATI MATIMBA filed this application by way of Chamber Summons under Section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019 (The AJA) and Rule 45(a) of the Tanzania Court of

Appeal Rules, 2009 as amended by Rule 6 of the Tanzania Court of Appeal (Amendments) Rules, GN. No. 362 of 2017 (the CAT Rules). The application was supported by an affidavit of Mr. Cosmas Kishamawe, the applicant's counsel. It is seeking the following orders:

1. That this court be pleased to grant leave to appeal to the Court of Appeal of Tanzania (The CAT) against the judgment delivered by Honourable Y. J Mlyambina, J on 15th December, 2021 in Civil Appeal No. 10 of 2019 between Jagro Enterprises Limited vs. Bahati Matimba,
2. That costs to follow the event,
3. Any other relief this Honourable court may deem fit to grant.

The respondent objected the application through a counter affidavit sworn by one Maulid Khamis Issa who introduced himself as the Managing Director of the respondent.

In this matter, the applicant was represented by Mr. Cosmas Kishamawe, learned counsel whereas the respondent was represented by Mr. Anthony Mwashubila, learned advocate. This court directed the parties to argue the application by way of written submissions. Indeed, the court had ordered (on 21.04.2022) that the written submissions in-chief by the applicant be filed on or before 04.05.2022. The respondent had to file the replying submissions on or before 18.05.2022 and rejoinder (if any) had to be filed by the applicant on or before 25.05.2022.

However, when the matter came before the court for fixing the date of ruling, it was noted that, the written submissions in-chief by the

applicant had been filed on 05.05.2022 instead of 04.05.2022 as directed by the court, hence showing that the applicant had delayed to file the same in court. It thus, directed the parties to address it on the legal effect of the non-compliance with the court order (i.e. the delay to file the same).

The learned advocate for the applicant submitted that, he had timely filed his submissions, but he did not remember the date when he did so. He alternatively prayed for the court to forgive him for the mistake as that is not the mistake of his client. On his part, the learned counsel for the respondent left it to the court to decide on the effect of the delay. The court thus, adjourned the matter for determining on the legal effect of the delay and for the ruling on the application if need will arise.

I will therefore, firstly consider the legal effect of the delay mentioned above to the application. In case I find the delay to be inconsequential, I will proceed to examine the merits of the application itself. Otherwise, I will make necessary orders according to the law.

In the first place, I must indicate at this juncture that, it is my conviction that, the fact that the delay under discussion is unopposed by the respondent's counsel, is in law, not the only reason for this court to condone it. This is because, courts of law are enjoined to decide matters before them in accordance with the Constitution of the United Republic of Tanzania, 1977, Cap. 2 RE. 2002 (The Constitution) and the law. They do not decide matters according to the consensus of the parties to proceedings. This position was underlined in the case of **John Magendo v. N. E. Govan (1973) LRT n. 60**. Furthermore, the Court of Appeal of

Tanzania (The CAT) emphasized it in the case of **Tryphone Elias @ Ryphone Elias and another v. Majaliwa Daudi Mayaya, Civil Appeal No. 186 of 2017, CAT at Mwanza**, (unreported Ruling). In that precedent, the CAT held, *inter alia* that, the duty of courts is to apply and interpret the laws of the country. It added that, superior courts have the additional duty of ensuring proper application of the laws by the courts below. I will therefore, proceed to test the effect of the delay at issue irrespective of the fact that it is uncontested by the respondent.

The issue before me is therefore, as hinted earlier, this: *what is the legal effect of the delay (for the applicant to file written submissions in chief) to the application at hand?* Indeed, it is clear according to the record that, the written submissions in-chief by the learned counsel for the applicant were filed in this court of the 5.5.2022. This is evidenced by the rubber stamp of this court (at the top of the submissions) showing that the same were received in the court's registry on that date. At the bottom of the submissions, it is also indicated that the same had been lodged in court on the same date. Furthermore, the exchequer receipt (No. 25409904-3) shows that, the necessary filing fee for the submissions was paid on the same date. Certainly, the law guides that, the date for filing a document in court is the date for paying the necessary filing fee shown in the exchequer receipt.

According to the above narration of what had happened, the contention by the applicant's counsel that he filed the submissions timely is rendered untenable. Furthermore, he neither mentioned the date when he

allegedly filed the same nor produce a copy of the exchequer receipt to that effect. Besides, it is the court record which prevails in the process of justice administration and not the memory of the parties or their counsel. The law also guides that, court records are presumed to be genuine and accurately representing what happened (in court), they cannot thus, be easily impeached, unless there is evidence to the contrary; see **Halfani Sudi v. Abieza Chichili [1998] TLR. 527**. In the case at hand there is no such evidence which impeaches the above demonstrated scenario shown by the court record.

It is therefore, conclusive that the applicant in fact, filed the submissions on the 5. 5. 2022 though it had been ordered by this court for the same to be filed on or before 4. 5. 2020. The submissions were thus, filed out of the time prescribed by the court for a day. However, in law, a delay is a delay, even a single-day delay is a delay like any other tardiness of a longer period; see the decision by the CAT in the cases of **National Bank of Commerce Ltd v. Partners Construction Company Ltd, CAT Civil Appeal No. 34 of 2003** (unreported) and **Hemedi Ramadhani and 15 others v. Tanzania Barbours Authority, Civil Appeal No. 63 of 2001, CAT at Dar as Salaam** (unreported).

It is my further opinion that, the law is settled on the effect of failure of delay by a party to court proceedings to file written submissions beyond the time prescribed by the court (where the court has directed a hearing of the matter to proceed by written submissions). It guides that, such delay or failure is tantamount to a failure to appear or prepare for the hearing;

see the holding in **Olam Tanzania Limited v. Halawa Kwilaby, Civil Appeal No. 17 of 1999, High Court of Tanzania (HCT) at Mbeya** (unreported). I also underscored the position in the case of **Chapajembe Amcos v. Ramadhani Rashidi Kabhipe, DC. Civil Appeal No. 10 of 2017, HCT, at Tabora** (unreported Judgement dated 29/12/2017).

The CAT in the case of **National Insurance Corporation of (T) Ltd & Another v. Shengena Limited, Civil Application No. 20 of 2007** at Dar es Salaam (unreported) also made a useful guideline on the position of the law. It observed thus, and I leave it to speak by itself:

"The applicant did not file submission on due date as ordered. Naturally, the court could not be made impotent by a party's inaction. It had to act.....it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."

The position of the law highlighted above was also underscored by the same CAT in the cases of **Patson Matonya v. The Registrar Industrial Court of Tanzania & Another, Civil Application No. 90 of 2011, CAT at Dodoma** (unreported) and **Godfrey Kimbe v. Peter Ngonyani, Civil Appeal No. 41 of 2014, CAT at Dar es Salaam** (unreported).

Indeed, the rationale for the rule underlined above is not far to fetch. It is this; where a court has directed a matter before it to proceed by way of written submissions, such mode of hearing is indeed, legally considered to be a hearing of the matter like the oral hearing. Parties must therefore, comply with the scheduling order fixed by the court so as not to delay the matter. They have to strictly observe the schedule because, if they do not do so without good reason, cases in courts will never end, each party will



file submissions at his/her own whims and court orders will be disregarded with impunity. Courts will thus, be rendered toothless dogs and will fail to discharge their constitutional duty of disposing of cases speedily. This duty is imposed on courts under article 107A(2)(b) of the Constitution (supra).

It follows thus, that, the contention by the applicant's counsel that his client is not to blame is weightless. In fact, a party is represented by a counsel in court proceedings. One cannot thus, separate mistakes made by parties and those made by their counsel. Again, the above mentioned plea of forgiveness made by the applicant's counsel is not a legal remedy for that unexplained delay amid the stance of the law highlighted above. Otherwise, this court will set a bad precedent of forgiving parties for floating court orders without any justifiable reason.

Now, since the law as highlighted above guides that delay to file written submissions is tantamount to failure to prosecute or defend the matter in court, I am of the view that, in the matter at hand, since the delay was caused by the applicant, it is considered that the applicant has failed to prosecute the application. The remedy for that failure is none other than a dismissal for want of prosecution. This finding answers the issue posed above. I thus, find that, the application at hand is liable to be dismissed for want of prosecution.

The finding I have just made above, makes it unnecessary to consider the merits of the application at hand since it is capable of disposing the entire matter. I therefore, dismiss the application at hand.

Each party shall bear its own costs since the respondent did not also contest the delay. It is so ordered.



JHK UTAMWA
JUDGE
06/10/2022

06/10/2022.

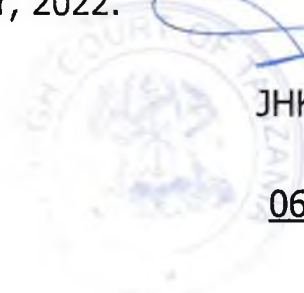

CORAM; JHK. Utamwa, J.

For applicant: Mr. Lazaro, adv. holding briefs for Mr. Cosmas, adv.

For respondent: Mr. Lazaro, adv. holding briefs for Mr. Anthony, adv.

BC; Mr. Godfrey Mpogole.

Court; Ruling delivered in the presence of Mr. Lazaro Hukumu, learned counsel holding briefs for Mr. Cosmas Kishamawe, advocate for the applicant and for Mr. Anthony Mwashubila, advocate for the respondent, this 6th October, 2022.



JHK UTAMWA
JUDGE
06/10/2022.