

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 191 OF 2022**

**MADRASAT HUSNAL BARAKAT ..... APPLICANT**

**VERSUS**

**AHMED MOHAMED ..... RESPONDENT**

**RULING**

26<sup>th</sup> September, & 15<sup>th</sup> November, 2022

**ISMAIL, J**

The applicant has instituted the instant application seeking to restore an application which was dismissed on 21<sup>st</sup> April, 2022, for want of prosecution. The application has been opposed to by the respondent, through a counter-affidavit filed alongside the notice of preliminary objections. The latter challenges the competence of the application.

On 26<sup>th</sup> September, 2022, the parties appeared in Court for necessary orders. It was unanimously agreed by the parties, and ordered by the Court, that disposal of the preliminary objections be done by way of written submissions. A schedule for filing the submissions was drawn. The privilege of

addressing the Court first was, as is the practice, accorded to the party that raised the objections, in this case, the respondent, who is operating through Mr. Amin Mohamed Mshana, learned counsel.

Inexplicably, however, up until the close of business on 10<sup>th</sup> October, 2022, and to-date, nothing has been filed by counsel for the respondent or at all. No extension of time has been sought by the respondent, either. It logically followed that counsel for the applicant could not field any representations.

The parties' failure to conform to the order of the Court raises a question on the course of action that the Court should take in the circumstances.

The settled position is that a party's failure to abide by the court order for filing written submissions is taken to be akin to failure by such party, or both of the parties, to prosecute their case. Where the default is at the instance of a party that raised the preliminary objection, the inevitable consequence is to render the objections liable to being overruled. Numerous decisions have underscored this position. They include: ***Tanzania Harbours Authority v. Mohamed R. Mohamed*** [2002] TLR 76; ***Patson Matonya v. Registrar Industrial Court of Tanzania & Another***, CAT-Civil Application No. 90 of 2011; and ***Geofrey Kimbe v. Peter Ngonyani***, CAT-Civil Appeal No. 41 of 2014 (DSM-unreported).

In the case of ***Olam Tanzania Limited v. Halawa Kwilabya***, HC-(DC.) Civil Appeal No. 17 of 1999 (unreported), the Court adopted the following stance:

*"Now what is the effect of a court order that carries instructions which are to be carried out within a pre-determined period? Obviously, such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to halt or it will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submission is part of hearing. So, if a party fails to act within prescribed time he will be guilty of in-diligence in like measure as if he defaulted to appear .... This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."*

This resounding position was reiterated in ***P3525 LT Idahya Maganga Gregory v. Judge Advocate General***, Court Martial Criminal Appeal No. 2 of 2002 (unreported), in the following words:

*"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 consequence of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. The Court decision on the subject matter is bound .... Similarly, courts have not been soft with the litigants who fail to comply with court orders, including failure to file written submissions within the time frame ordered."*

Emboldened by the reasoning in the cited decision, I hold the view that the preliminary objections raised by the respondent have not been prosecuted on and are hereby overruled with costs.

This order leaves the application for restoration unscathed and the same will be scheduled for orders in due course.

It is so ordered.

DATED at **DAR ES SALAAM** this **15<sup>th</sup>** day of **November, 2022.**



**M.K. ISMAIL**  
**JUDGE**  
**15.11.2022**

