

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TEMEKE SUB-REGISTRY**

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

PC CIVIL APPEAL NO. 07 OF 2021

*(Arising from the decision of the District Court of Kinondoni at Kinondoni in
Matrimonial Appeal No. 31 of 2021 and originating from Matrimonial Cause No. 49 of
2021 at Kimara Primary Court)*

AMINATA ALLY MBONDE.....APPELLANT

VERSUS

STEVEN SAMWEL.....RESPONDENT

JUDGMENT

Date of last order: - 22/07/2022
Date of judgment: - 27/10/2022

OPIYO, J.

Aminata Ally Mbonde was aggrieved by the decision of the District Court of Kinondoni at Kinondoni in Matrimonial Appeal No. 31 of 2021 appealed against the said decision based on six grounds as stipulated hereunder;

1. That, the trial magistrate erred in law and facts by dismissing the appellants appeal without giving regard to the health and economic situation of the appellant.
2. That, the trial magistrate erred in law and facts by composing a judgment relying on the technicality hence reached unfair decision.



3. That, the trial magistrate erred in law and facts by considering the respondent's submission which is unjustifiable, hence, reached to unfair decision.
4. That, the trial magistrate erred in law and facts by giving favour to the respondent as a result the respondent evicted the appellant from the matrimonial house without declare the divorce(sic)
5. That, the trial magistrate erred in law and facts by condemn the appellant unheard.
6. That, the trial magistrate erred in law and facts by not considering the appellant was unrepresented and she is a lay person, as a result declared unjust decision. (sic)

Thus, the appellant prays for the appeal to be allowed and the decision of Kinondoni District Court be quashed and set aside or order for retrial.

The record shows that the appellant petitioned at Primary Court of Kimara through Matrimonial Cause No.49/2021 for divorce, maintenance and division of matrimonial properties. At the end, the divorce was granted. It was further decided that the respondent should pay Tshs. 50,000 monthly for maintenance, the farm at Kibaha was given to the appellant and the house at Magari Saba to the respondent. Dissatisfied with the decision, the appellant appealed vide matrimonial Appeal No. 31 of 2021 to the District Court of Kinondoni challenging the award on division of matrimonial properties, and maintenance, the matter on 8/10/2021 was dismissed for non-appearance hence this appeal.

This appeal was argued by the way of written submission. Both parties adhered to the court orders on filing their respective written submissions. Submitting in chief the appellant on the first ground submitted that, she was supposed to file her submission in chief before or on 9th August 2021, the respondent to reply on or before 20th August 2021 and rejoinder if any on or before 26th August 2021 and referred to page 2 of the judgment. But the appellant was serious sick and economically poor, thus, she failed to engage an advocate and after recovery she went to Legal and Human Rights Centre in order to seek assistance. After obtaining the assistance, she filed her submission on 9th August 2021, that is, three days after expiration of time. Therefore, the delay was rather technical than real or actual (**Fortunatus Masha v William Shija and Another, 1997 TLR 154 (CA)**).

On the second ground the appellant submitted that, it is true the submission was filed out of time, but it is because the appellant is a layman, unrepresented and did not know how to seek leave to file submission out of time and the trial court was supposed to lead the appellant.

On the third ground the appellant argued that, the court failed to inquire why the appellant was out of time, the act which could lead the court to reach fair decision. Submitting in the fourth ground the appellant stated that, after winning the appeal the respondent chased the appellant from the matrimonial house while having a child below the age of 7 as the Primary Court decided the house belongs to the respondent. On the fifth ground the appellant submitted that, on her appeal she raised some grounds challenging unfair decision of the Primary Court, but her appeal



was dismissed before being heard. On the sixth ground the appellant stated that as she is a lay person, poor and sick, failure on consideration of all these by the trial court led to unjust decision to her.

Replying to the submission above the respondent stated that, there was a scheduled order of the hearing and the appellant was ordered to file her submission on 9th August 2021 but filed on 12th August, 2021 instead and without even seeking leave for extension of time. He cited the case of **Famari Investment (T) LTD v Abdallah Selemani Komba, Misc. Civil Application No. 41 of 2018, HC, Mbeya (unreported)** where it was held that:-

"It has already been settled that a case shall face dismissal for want of prosecution if a party fails to file his written submission on the date fixed by the court."

Replying on the second ground, the respondent submitted that, ignorance of law excuses no one (*ignorantia legis neminem excusant*) hence, the allegation to be a lay person causing failure to keep with the court order is not excusable and the trial magistrate was correct. On the third ground he submitted that there is no evidence that provided that she was sick and the court cannot be moved by mere words. Failure to seek leave to file submission out of time is an infringement to court procedure, he argued.

On the 4th ground the respondent submitted that, it is not true that he evicted her from matrimonial house but, she decided to runaway herself and he still needs her as a wife in order to raise the family together. She is the one who decided to seek for divorce without reasonable cause.



Lastly submitting on the 5th and 6th ground the respondent stated that, it is a trite law that failure to submission as ordered by the court amounts to failure to prosecute one's case.

Having heard both parties, this court is set to answer one major question whether the dismissal of the appellant's appeal was justified as all the grounds revolves around that. At the first appellate court, the case was scheduled for hearing by way of written submission where by appellants was supposed to file submission in chief on or by 9/8/2021, respondents reply 20/8/2021 rejoinder 26/8/2021. And the appellant filled her submission on 12/8/2021. As correctly argued by the respondent, it has been ruled number of times that failure to lodge written submission on the date fixed by court amounts to dismissal. This can be supported by number of cases including those cited by the respondent in support of his argument as shown above. To cite a few, in the case of the **Director of Public Prosecutions v Said Saleh Ali, Criminal Appeal No. 476 of 2017, Court of Appeal of Tanzania at Zanzibar** held that;

"...if a party fails to file his/her submission on scheduled date it is equated as if he/she has failed to appear on a hearing date with a consequence of dismissing the matter before the court."

Failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case- see: **National Insurance Corporation of (T) Ltd & another v. Shengena Limited, Civil Application No. 20 of 2007 and Patson**



Matonya v. The Registrar Industrial Court of Tanzania & another, Civil Application No. 90 of 2011(both unreported).

Basing on the above case laws and position of laws, the appellant was out of time and as a matter of procedure the court was bound not to hear the matter unless there was a leave to file the same out of time. The appellant was supposed first to obtain leave and adduce the reasons for delay of three days before filing her submission. The situation was not curable even in wake of the overriding objective principle. In the case of **Mondorosi Village Council & 2 Others v TBL and 4 Others, Civil Appeal No. 66 of 2017, Court of Appeal of Tanzania, at Arusha**, it was held that;

"...Regarding the overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the procedural law which go to the very foundation of the case."

And in the case of **Godwin Ndewesi Karoli Ishengoma v Tanzania Audit Corporation (1995) TLR 200**, held that,

"Rules are made to be followed and rules of court must prima facie be obeyed"

This court finds that, pleading ignorance of law, or being a lay person is not an excuse on abiding with mandatory provisions of the procedural law which go to the very foundation of the case. The court is bound by the scheduling order made by itself. If a party does not keep up to schedule, the necessary procedure is to be followed in making it good like obtaining leave of the court for extension of time. This is not an

automatic remedy, rather, it is the parties who moves the court and not otherwise giving justifiable reasons for the delay.

Parties are bound to the procedure and rules, which allows smooth running of court proceedings, failure of a party to observe mandatory procedures is tantamount to negligence and inactiveness and cannot be to justified through overriding principles. Having said so, this appeal is obviously bound to fail. I accordingly dismiss it. Let the appellant follow the right path if she is still interested in pursuing her rights. No order to cost due to the nature of the matter.

It is ordered.



A handwritten signature in blue ink, appearing to read "M. P. Opiyo", is written above a horizontal line.

M. P. OPIYO,
JUDGE
27/10/2022