

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB-REGISTRY OF MWANZA)**

AT MWANZA

MISC. CIVIL APPLICATION NO. 133 OF 2021

*(Arising from the Ruling in Misc. Application No. 66 of 2020 of the Resident Magistrate's Court at Mwanza
delivered on 29th April, 2021 by Hon. Sumaye, RM.)*

JASSIE AND COMPANY LTD.....APPLICANT

VERSUS

CEMENT DISTRIBUTORS (EA) LTD.....RESPONDENT

R U L I N G

23rd March & 12th May, 2022

DYANSOBERA, J.:

The applicant is moving this court for the orders that an extension of time to file an application for revision out of time in the High Court of Tanzania against the decision of the Resident Magistrate's Court of Mwanza in Misc. Application No. 66 of 2020 which was delivered on 29th day of April, 2021 be granted, costs of the application and any other reliefs.

The respondent has not only resisted the application but also has, through Dr. George Mwaisondola, learned Counsel, filed a notice of preliminary objection on grounds that:

- (i) The Honourable Court has no jurisdiction to grant extension of time to file unlawful application

(ii) The applicant's application is an abuse of the court process

(iii) The applicant's application has been overtaken by event.

On 23rd day of March, 2022 Dr. George Mwaisondola appeared for the respondent and held brief for Advocate Gisabu. He submitted that the matter was for hearing of the preliminary objection but that Advocate Gisabu was indisposed. He prayed the preliminary objection to be argued by way of written submissions. The prayer was granted and a time frame was set as followed: the written submission in chief in support of the preliminary objection had to be filed on 6. 4.2022, the written reply was to be filed on 20.4.2022 while the rejoinder, if any, had to be in place on 27.4.2022. The ruling was slated for delivery today, that is 12th May, 2022.

It is on record that the respondent has filed neither the written submission in chief in support of the preliminary objection nor a rejoinder.

It is a settled principle of law that, failure to file written submission as ordered by the court is a manifestation of failure to prosecute the matter concerned. There is no dispute that it is the learned Counsel for the respondent who asked this court for leave for the preliminary objection to be argued by way of written submissions. On the practice of filing written

submissions instead of the in-hearing, the Court Martial in P **3525 LT Idahya Maganga Gregory Vs. The Judge Advocate General**, Court Martial Criminal Appeal No.2 of 2002 (unreported) the court held that;

"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 consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be....."

In that respect, failure to file written submission on the dates scheduled by the court without justifiable reasons is as good as non-appearing on the date fixed for hearing. The consequences of failure to file written submissions were elucidated by the court in **Haleko v. Harry Mwasaijala**, DC Civil Appeal No.16 of 2000, (unreported), where the court observed;

"I hold, therefore that the failure to file written submission inside the time prescribed by the court order was inexcusable

and amount to failure to prosecute the appeal. Accordingly, the appeal is dismissed with costs."

The *raison d'être* of adhering to the court's orders cannot be overemphasised as court orders are made to be obeyed and not otherwise. Alive to this principle, this Court in **Olam Tanzania Limited v. Halawa Kwilabya**, DC. Civil Appeal No.17 of 1999(unreported) made the following pertinent observation:-

"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 a halt or it will be so chaotic that everyone will decide to do only that which is convenient 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 indiligence 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.”

In the case under consideration, the respondent has failed to file the written submission in chief in support of the preliminary objection. Since there is neither notice for the default nor an extension sought and obtained, I take that the respondent has abandoned her preliminary objection. This preliminary this preliminary objection cannot stand.

In the premise and for the reasons stated above, this preliminary objection cannot stand. It is dismissed with costs to the applicant.



W.P. Dyansobera

Judge

12.5.2022

This ruling is delivered under my hand and the seal of this Court on this 12th day of May, 2022 in the presence of Ms Suzana Gisabu, learned Counsel for the applicant and holding brief for Dr. George Mwaiondiola, learned counsel for the respondent.



W.P. Dyansobera

Judge