

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA**

**LAND APPEAL NO. 17 OF 2021
(Originating from the decision of the decision of the District Land and
Housing Tribunal for Mbeya in Land Application No. 247 of 2019)**

AZINAMWISHO MWAMPASHI.....APPEALANT

VERSUS

**PHILIMON SHITENTE.....1ST RESPONDENT
SELEMAN NZYELA.....2ND RESPONDENT**

JUDGMENT

Date: 9th March & 17th May, 2022

KARAYEMAHA, J

When this appeal came up for hearing before Mbagwa, J on 22/07/2021, the appellant was present. The respondents were also present. Respondents prayed the appeal to be argued by way of written submission. It appears the appellant conceded because he is no recorded to have objected. The court granted the respondents' prayer and proceeded to schedule the submissions dates as follows:

"(iii) Appellant to file written submission on

09/08/2021.

(iv) Respondents to file reply 25/08/2021.

(v) Rejoinder if any 02/09/2021

(vi) Mention 03/09/2021"

The appellant has defaulted the Court order which required him to file his submission on 09/08/2021. He filed it on 02/09/2021. Although it indicates that it was drawn at Mbozi on 31/07/2021, it was presented for filing on 02/09/2021 quite outside the time limit ordered by court. This act forced the respondents to file their reply on 23/11/2021 instead of 25/08/2021.

In their submission, respondents argued that the appellant failed to comply with the Court's order by filing the submission out of the ordered time. They, therefore, held the view that failure to file written submission within the time ordered by the Court is inexcusable and amounted to failure to prosecute the appeal. The appellant did not rise up and state why he delayed to file his written submission. He simply stated on 09/03/2022 that he had already filed the submission and prayed for a judgment date. Still the judgment could not be delivered on 25/04/2022 because I was in a criminal session but said nothing in relation to a delay on that day before the Hon. Deputy Registrar who adjourned this case.

This Court has held time without number that Courts orders are made in order to be implemented; they must be obeyed. Conversely, if they are disobeyed or ignored the system of justice will grind to halt or it will be chaotic that everyone will decide to do only that which is convenient to them. See the case of **Olam Tanzania Limited vs. Halawa Kwilabya**, (DC) Civil Appeal No. 17 of 1999 HC-Registry which was quoted in the case of **Harold Maleko vs. Harry Mwasanjala**, DC, Civil Appeal No. 16 of 2000 and in **Seti Tete vs. Mwanjelwa SACCOS**, Misc. Civil Application No. 22 of 2018 HC Registry – Mbeya (all unreported).

In principle, written submissions are a substitute of oral hearing. Thus failure to file a written submission as ordered by court is akin to failure to appear when the case is called on for hearing and consequent orders for such non appearance are inevitable. In **Harold Maleko vs. Harry Mwasanjala**, DC Civil Appeal No. 16 of 2000 (HC- Mbeya, unreported), where Makanja, J (as he then was) held that;

"I hold therefore that the failure to file written submission inside the time prescribed by the court was inexcusable and amounted to failure to prosecute the appeal....."

In **Godfrey Chawe vs. Nathaniel K. Chawe**, Misc. Civil Application No. 22 of 1998 (unreported) the court grappled with a corresponding situation and held that:

"...Failure to file written arguments on the part of the learned counsel for the applicant is an omission which constitutes want of prosecution. I would dismiss the application on that account..."

See also **Andrea Numba vs. Trezia Mwigobane**, Civil Appeal No. 1 of 2006 (unreported).

In the upshot the Appellant has defaulted in honouring the orders of this Court to file his written submission thus failed to prosecute his appeal. The inexcusable conduct of the appellant triggers the lone consequence of dismissing his appeal for want of prosecution as I hereby do with costs.

DATED at MBEYA this 17th day of May, 2022.

**J.M. KARAYEMAHA
JUDGE**