

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CIVIL REVISION NO. 08 OF 2020**

(C/F Primary Court of Arusha Urban, Matrimonial Cause No. 117 of 2018 vide Misc.  
Civil Application No. 07 of 2020 and Civil Revision No. 9 of 2020)

**IDD JUMA LAIZER.....APPLICANT**

**VERSUS**

**KURUTHUM MICHAEL KANOTI.....RESPONDENT**

**RULING**

10.05.2022 & 17.05.2022

**N.R. MWASEBA, J.**

Idd Juma Laizer the applicant herein, has preferred this application against Kuruthum Michael Kanoti, challenging the decision of the District Court of Arusha at Arusha which ordered the respondent to be given a second house to live with infant children and for the applicant to provide monthly maintenance of Tshs. 50,000/=. His application was supported by an affidavit sworn by the applicant himself.



The background story revealed that, the respondent filed a petition for divorce at Arusha Urban Primary Court against the applicant herein. At the end of the trial, the court was satisfied that their marriage was broken down irrepealably, and the custody of the children was given to the respondent and the applicant was ordered to provide maintenance at the tune of Tshs. 50,000/= per month. As for the matrimonial home it was ordered the applicant should give the respondent Tshs. 1,000,000/= as a compensation for the same.

Aggrieved, the respondent sought her relief by filing Civil revision at Arusha District Court which quashed the decision of the primary court with regard to division of matrimonial assets and ordered the respondent to remain in the matrimonial home and the applicant to provide maintenance as ordered by the trial court. According to the applicant herein, this decision occasioned miscarriage of justice hence the present application.

During the hearing, both parties appeared in person. By consent of both parties, the hearing of this application proceeded by way of written submissions. Unfortunately, the parties did not adhere to the schedule of filling their submission as ordered by the court.

When the matter came for mention on 10.05.2022, the respondent told the court that, she came several times but the applicant did not file his

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submission. She added that, he was supposed to file his submission on 29.03.2022 but the same was filed on 27.04.2022, and on 06.05.2022 a ten-cell leader brought a submission in order to serve her but she refused to receive as the time has already lapsed. Thus, she prayed for the court to adhere to its scheduling order since it is too long from 29.03.2022 up to 27.04.2022.

On his side, the applicant told the court that he brought his submission in court but it was in Swahili language so the court did not receive it. He decided to find the counsel who will assist him to write it in English language. After that he fell sick, and after recovering, he was called by the counsel to pick up a copy to be served to the respondent. He added that he has no proof that he was sick because he used traditional medicine and that a Swahili copy of the submission remained with his counsel. He prayed for the court to proceed with the case though his submission was filed out of time.

Basing on the submission of the parties, the core issue here is whether the applicant has advanced sufficient cause for his failure to file submission within the prescribe time.

I have gone through the proceedings of the Court dated 15/03/2022. Basing on the prayer of both parties that the matter be argued by way of

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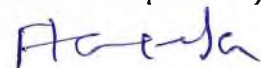
written submission, the court ordered the parties to file their submission as follows:

**Order:**

- 1. Written submission in chief by 29.03.2022*
- 2. Reply thereto by 12.04.2022*
- 3. Rejoinder (if any) by 19.04.2022*
- 4. Mention on 10.05.2022 at 9.00 am*

Unquestionably, when the respondent filed his written submission on 27<sup>th</sup> day of April, 2022, he was late for 28 days out of the time prescribed by the Court. There are no records that the applicant had sought for extension of time to file his submission in chief or leave of the court to do the same. The question now is what are the consequence of such delay.

Am aware that if a party fails to file his or her submission within the prescribed time it is equated as if he/she has failed to appear on a hearing date and the consequence is the dismissal of the matter. The same was decided in a case of **Director of Public Prosecutions Vs Said Saleh Ali**, Criminal Appeal No. 476 of 2017 and **Godfrey Kimbe Vs Peter Ngonyani**, Civil Appeal No. 41 of 2014 (CAT) (Both-Unreported).



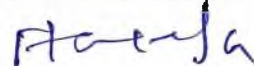
However, as it was decided in many cases including the case of Tanzania **Knitwear Ltd Vs. Shamshu** (1989) TLR 48, that each case has to be decided basing on its own peculiar facts. The same will apply in our present case.

As it was held in the case of **Ramadhan Nyoni Vs Haule and Co. Advocate** (1996) TLR 71, that:

*" That, where a layman, unaware of procedural process, tries to get before court, procedural rules should not be used to defeat justice; the applicant falls in the premises of that decision and justice to him in this case is to be allowed."*

Apart from the cited decision this court will also consider Article 107A (2) of **Constitution of the United Republic of Tanzania**, of 1977, in order to give precedence to substantive justice rather than legal technicalities in administration of justice.

In the light of the above position, and taking into consideration both parties are lay persons and unrepresented, thus, to be fair, I hereby agree to the prayer of the applicant to file his written submission out of the prescribed time and for the respondent to reply the same. This is due to the fact that the matter is related to family issues and the couple are still



living under one roof because the matrimonial house is yet to be distributed among the parties.

Ordered accordingly.

**DATED** at **ARUSHA** this 17<sup>th</sup> day of May, 2022.



*N.R. Mwaseba*  
**N.R. MWASEBA**

**JUDGE**

**17.05.2022**