

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 122 OF 2021

ZALHA MOHAMED BAKARI APPELLANT

VERSUS

BAKARI AMRI RESPONDENT

**(Appeal from the decision of the District Court of Mafia at Mafia in
Matrimonial Appeal No. 2 of 2021)**

RULING

20th and 20th May, 2022

KISANYA, J.:

When this matter was called on for mention today, Mr. Herman Kilenzi, learned advocate, appeared for the appellant, whilst the respondent was advocated by Ms. Annet Christopher holding brief for Ms. Neema Cathbet, learned advocate.

From the outset, Ms. Christopher informed the Court that the respondent had not filed his written submission in reply because he was not served with the appellant's submission in chief. That being the position and making reference to the case of **Tabitha Maro vs Raddy Fibre Solution Limited**, Civil Appeal No. 214 of 2018, HCT at Dar es Salaam (unreported), the learned counsel urged that the appellant has failed to prosecute the appeal. He, thus, urged me to dismiss the appeal for want of prosecution.

Mr. Kilenzi contended that the appellant's written submission was filed through electronic filing system on 5th May, 2022. However, he conceded that the court filing fees was not paid. He also failed to produce an electronic printout to prove that the written submission was filed electronically. The learned counsel went on to pray that the time to file written submissions be extended.

It is on record that when this matter came up for hearing on 27th April, 2022, the prayer to have this appeal disposed by way of written submissions was made by the appellant. She was ordered to file her submission in chief on or before 5th May, 2022 and the respondent directed to file the submission in reply on before 12th May, 2022.

As rightly submitted by Ms. Christopher, the appellant failed to file her submission in chief according to the order of this court. Although Mr. Kilenzi contended that the submission was filed electronically, he admitted that the court filing fees was not paid. In terms of the settled law, a document is considered to have filed upon payment of the court filing fees. [See **John Chuwa vs Antony Ciza** [1992] TLR 233]. Considering further that, the appellant's counsel has not produced the electronic printout which was generated from the electronic filing system, I am of the view that the appellant did not file the written submission.

By failing to file the submissions in accordance with the order of this Court dated 27th April, 2022, the appellant has failed to prosecute her appeal at the date

of hearing. There is a list of authorities to support that position. This include the cases of **Tabitha Maro** (supra) and **Godfrey Kimbe vs Peter Ngonyani, Civil Appeal No. 41 of 2014**, Civil Application No. 20 of 2007. In the latter case the Court of Appeal cited with approval its earlier decision in **National Insurance Corporation of (T) Ltd & another v. Shengena Limited**, Civil Application No. 20 of 2007 where it was held that:-

"The Applicant did not file submission on due date as ordered. Naturally, the court could not be made impotent by a party's inaction. It had to act. ... it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."

In the view of the above position of law, I agree with the respondent's counsel that the appellant has failed to prosecute her appeal.

That said and done, I hereby dismiss this appeal for want of prosecution. Given the nature of this case, I make no order as to costs.

DATED at DAR ES SALAAM this 20th day of May, 2022.



S.E. Kisanya
JUDGE