

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 10 OF 2022

(Arising from LAND CASE 5 OF 2019)

DR RASHIDI ABDILLAHI DACHI.....APPLICANT

VERSUS

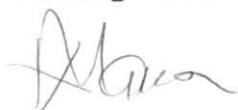
LEONARD GERALD BURA..... RESPONDENT

RULING

Mansoor, J.

20TH MAY 2022

The Applicant, Dr Rashidi Abdillahi Dachi filed an application under Order XXXVII of the Civil Procedure Code, Cap 33 R: E 2019, praying for the Court to order the respondent to be retained as a civil prisoner for disobedience of an order granted for temporary injunction. The order was issued on 22nd June 2020 by Hon. Judge Mruma, in Misc. Land Application No. 8 of 2020. The Court granted an order for temporary injunction pending final determination of Land Case No. 5 of 2019 restraining the respondent from carrying out or conducting any mining activities in the suit land located at



Kilimamzinga Village in Negero Ward, Kilindi District, Tanga, the land in dispute is 2 acres. The Applicant claims that the respondent ignored the Court order and continued with the mining activities at the disputed land. That the respondent removed the structures installed by the Applicant. The Applicant avers in paragraph 10 of his affidavit that on 10th January 2022, he had taken pictures of the activities going on at the disputed land by a drone, and the pictures were annexed in the affidavit as Annexure GAK1.

The respondent filed counter affidavit denying being the trespasser to the disputed land, however, he says that he has been granted a mining license together with 8 other people on 24th August 2016 and has been conducting mining activities on the 24 acres of land, and never did any activities on the 2 acres of the disputed land after the demarcations of land which were done after the order of injunctions has been issued. The respondent avers that he has no interests whatsoever over the 2 acres of land claimed by the applicant, and he denies having ever disrespected the lawful court orders.

On 28th March 2022, Advocate Wantora for the Applicant appeared in Court, and informed the Court that he is not feeling well and needed to go to the Hospital, and so he applied for the application to be heard by written submissions, also, he prayed for three days to file his submissions in chief. His prayers were not objected by the Counsel for the respondent, but the Counsel for the respondent had asked for 14 days to file the Reply submissions. The prayers were granted, and the Applicant was ordered to file his submissions in Chief on 30th March 2022. The Applicant, however, did not comply with the Court Orders, and filed the submissions in chief on 31st March 2022. He was late for one day, and never asked for leave of the Court to file his submissions out of the date scheduled by the Court. The submissions were served onto the respondent who filed his reply to submissions on time, and on it he raised an objection that the submissions in chief were filed out of the scheduled time, without the leave of the Court. This prompted the Applicant's Counsel to file formal application for extension of time to file the submissions in chief, but the Deputy Registrar rejected the admission of the application. Then, the Counsel for the

Counsel for the Applicant to make any application for extension of time for a thing which he has already done. The Counsel for the respondent prayed for the dismissal of the application for failure to prosecute it.

I have heard the counsels and, I have considered very seriously the facts of the present application. It is obvious and as admitted by the Counsel for the Applicant that he did not comply with the order of the Court to file his submissions on 30th March 2022, and he also admits that he filed the submissions outside the scheduled time and without the leave of the Court, and now he comes to court by way of a letter trying to remedy his mistakes. Is this how we run the Courts?

The records will speak out, sufficient opportunities have been given to the Applicant to fully comply with the orders of filing the submissions, in fact he himself had applied for three days and he was granted, rather than availing of the same, he has adopted various dilatory tactics to delay finalization of the suit. Not only that he did not comply with the orders passed by this Court, but again, he decided to file the submissions at the time of his liking,

Applicant decided to write a letter to Court, the letter dated 12th April 2022, seeking the Court to give him a chance for making the formal application for enlargement of time to file the application for extension of time to file the submissions.

When the case came up for the Ruling of the main application, i.e on 29th April 2022, the Counsels were afforded the chance to address the Court regarding the letters of the Counsel for the Applicant. Both sides addressed the Court, and basically, the Counsel for the Applicant was seeking the extension of time to file the written submissions which he had already filed. He asked to expunge the submissions he already filed, he also prayed to be given extension of time to file the submissions.

Counsel Bana Peter who is representing the respondent objected the prayers. Counsel Bana argues that the Counsel for the Applicant should have filed the application for extension of time first before he decided to file the submissions in chief out of time without the leave of the Court. That the respondent had already filed the reply to the submissions in chief and the Counsel for the Applicant also has filed the rejoinder submissions, and so it is too late for the

ignoring completely the scheduled orders, without the leave of the Court. Noncompliance of the Court orders shakes the very foundation of our judicial system and undermines the rule of law, which we are bound to honor and protect. This is essential to maintain faith and confidence of the people of this country in the judiciary.

As if that was not enough, the Counsel alleges that he filed the application for extension of time to file the submissions, but that was rejected by the Deputy Registrar. The Counsel only alleges this without bringing any proof. Again, he admits that he made the application for extension of time after he had already filed the submissions in court, and he wanted the court to condone the delay and file the second submissions? It is completely unknown procedures.

There is no escape from, acceptance, or obedience, or compliance of an order passed by the Court, be it a subordinate court, High Court, or the Court of Appeal. What if every citizen or court user decide not to comply with any orders of the Court or creates his own time for compliance of the court orders? Where

would we be, if decisions on private disputes rendered between private individuals, are not complied with? Non-compliance of court orders would dislodge the cornerstone maintaining the equilibrium and equanimity in the country's governance. There would be a breakdown of constitutional functioning. It would be a mayhem of sorts. It would be a chaos. There would not be proper administration of justice.

As held in many courts decisions failure to file written submissions is equally a failure to prosecute the case, and the case or matter is therefore liable for dismissal. The default is not committed by mere absence but by such absence for which no sufficient and reasonable cause can be shown. The failure of the Applicant to appear on the day of hearing does not merely mean that he was not present at the time when the case was called but it also embraces and implies that the Applicant failed to prosecute his case. In Order IX, Rule 8 of the Civil Procedure Code, the wording is, "where The plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the Suit be dismissed," etc. From this the plaintiff should be present




when the case is called on for hearing, and if he does not appear, the remedy is to dismiss the matter. Then, if a party wishes to restore it, he shall be required to furnish to court reasonable and sufficient causes for his failure to appear when the matter was called on for hearing. Similarly, when a party fails to submit the written submissions in time, he has failed to appear for hearing, and the remedy is the dismissal of the matter.

For the above stated reasons, since the applicant failed to file the submissions on the time fixed by the Court, he has failed to prosecute the case, and so the application No. 10 of 2022, is hereby dismissed for failure to prosecute, with costs.

DATED AND DELIVERED AT TANGA ON 20TH MAY 2022




L. Mansoor, JUDGE

20TH /05/2022