

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI

MISC LAND APPLICATION NO. 55 OF 2022

(Arising from application no 62 of 2008 in the Moshi District Land and Housing Tribunal for Moshi at Moshi)

HON. ATTORNEY GENERAL 1ST APPLICANT

MOSHI MUNICIPAL COUNCIL2ND APPLICANT

VERSUS

BARNABA MIROSHI RESPONDENT

RULING

6th February & 23rd March 2023

A.P.KILIMI, J.:

The applicants named above have moved this court by way of chamber summons supported by affidavit made under Section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2019], Section 95 and Order XLIII Rule 2 of the Civil Procedure Code [Cap.33 R.E 2019] praying for the following orders:-

First; That, the Court be pleased to extend time within which the Applicants may bring an application for revision of the judgement in Application No. 62 of 2008 from District Land and Housing Tribunal for Moshi dated 24/11/2008 and the Decree thereto dated 24th day of November, 2008.

Second; that, costs to abide by the application for revision if extension is granted. And third; any other relief the Court may deem fit and just to grant in favour of the Applicants.

In counter affidavit the respondent hereinabove filed a notice of preliminary objection on points of law as follows: -

1. That, Application is fatally incompetent as it is supported by affidavit sworn by a stranger and based on fatally defective joint affidavit.
2. That the Application is res judicata to Misc. Land Application No. 2 / 2022 High Court of Tanzania, Moshi District Registry.
3. That, the Application is incompetent as it intends to file revision as alternative to appeal.
4. That, Application is fatally incompetent as it is made by a party with no cause of action.
5. That, the Application is fatally incompetent for violating mandatory legal requirements, pertaining to affidavits as the said affidavit contains: arguments, hearsay, defective jurat, and not affirmed by the deponent.

When the case came for hearing before me, the applicants were represented by Mr. Yohana Marko learned State Attorney while the respondent enjoyed the service of Elikunda Kipoko Learned advocate. I acceded to the both counsels' proposal to dispose these objections by way of written submission, and the following is the schedule for doing the same:-

- "1) Respondent to file on 30/11/2022*
- 2) Applicants to file on 14/12/2022*
- 3) Rejoinder if any on 21/12/2022*
- 4) Mention before this court on 21/12/2022."*

According to the record the Respondent filed submission on 1st day of December 2023 instead of 30th November 2023 as ordered above. Unidentified to the Court Clerk, he received the said submission consequently it reached the applicants for reply. The counsel for applicants replied insisting that respondent submission was contrary to the scheduling order of the court, which usually is discouraged by a number of decisions, to bolster this assertion applicants cited the cases of **Lucy Kasoma Makinda v. Zina Abdallah Making'ida**, Misc. Land Application No. 72 of 20 19 High Court at Dar es Salaam, and **Godfrey Kimbe v. Peter Ngonyani**, Civil Appeal No. 41 of 2014, Court of Appeal at Dar es Salaam.

In rejoinder, the counsel for respondent contended that, on computing the days, the day which the order was given, on 17th November 2022 is excluded and thus submission in chief was supposed to be filed on or before 1st day of December 2022 that is when 14 days lapsed. To support his argument he has referred the case of **KEC International Limited v.**

Azania Bank Ltd Commercial Case No. 52 of 2015, High Court of Tanzania at Dar es Salaam Commercial Division. Therefore, he says that his submission in chief on 01/12/2022 was on time.

I have considered the above arguments in respect to time scheduled for submission by the respondent, with respect, I don't agree with respondent counsel submission that the day which the order was given is excluded, this because the order of this court was clear and certain that respondent to file on 30/11/2022. The case cited by the respondent, its circumstances differ with the matter in this hand, in that case, the plaint was filed at Commercial court which the defendant was required to file Written Statement of defence according to the law which is rule 20(1) of the High Court (Commercial Division) Procedure Rules, 2012. Their word therein is WSD is to be filed within 21 days, that is why the court in that case sought the aid of section 19(1) of the Law of Limitation Act CAP 89 RE 2019 and section 60 (1) of The Interpretation of Laws and General Clauses Act CAP 1 R.E.2019 to interpret the meaning of "within 21 days".

In view thereof the case cited is distinguishable from this case, because when I ordered schedule for filing written submission no law was

relied but it was discretion of this court. And my order was very clear and certain that respondent to file on 30/11/2022 and I did not say within 14 days. Therefore, prudence was required to take these words literally and not otherwise. Therefore, it is my considered opinion the respondent faulted not to comply with the order issued by this court.

It is a trite law court orders need to be obeyed, nonetheless, courts should never allow itself to be placed in a position where it is forced to conduct its court proceedings according to the wishes of the parties. Therefore, it is the plain and unqualified obligation of every party against or in respect of whom, an order is made by Court of competent jurisdiction, to obey it unless and until that order is discharged. (See the case of **DPP v. Erasmus John Swai** Criminal Appeal No. 80 of 2021 HC at Moshi.)

The Court of Appeal in its decision in the case of **National Insurance Corporation of (T) Ltd & another v. Shengena Limited**, Civil Application No. 20 of 2007 the court underlined as follows:-

"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."

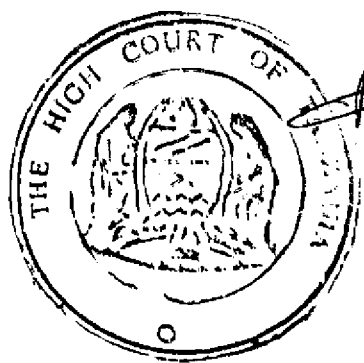
In view thereof, I am settled that consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. **(See: National Insurance Corporation of (T) Ltd & Another vs. Shengena Limited**, Civil Application No. 20 of 2007 and **Patson Matonya vs. The Registrar Industrial Court of Tanzania & Another**, Civil Application No. 90 of 2011 (unreported)).

Being guided by the above position of law, and the fact that the respondent got an opportunity to be heard through his rejoinder in respect to not comply with the order, the reasons he stated in my view cannot even be sheltered by the principle of overriding objective.

Consequently, since the respondent failed to file her written submissions on 30/11/2022 as per the court's order and his reasons has been rejected as stated above, I thus proceed to dismiss all points of preliminary objections raised by respondent and I order be expunged from the record of this case forthwith. Costs shall be in the cause.

It is so ordered.

DATED at **MOSHI** this 23rd day of February, 2023.



A. P. KILIMI

JUDGE

23/3/2023