

IN THE HIGH COURT OF TANZANIA

(SONGEA DISTRICT REGIDTRY)

AT SONGEA

LAND APPEAL NO. 15 OF 2022

(Originating from Misc. Land Application No. 230 of 2022 Mbinga District Land and Housing Tribunal)

THOMAS NDUNGURU APPELLANT

VERSUS

GETRUDE NDUNGURU RESPONDENT

JUDGEMENT

27/04/2023 & 13/06/2023

E.B. LUVANDA, J.

This is the judgement in relation to the appeal lodged by the appellant who was aggrieved by the decision entered by Mbinga District Land and Housing Tribunal (hereinafter the trial tribunal) whereby his application for extension of time was dismissed for failure to adduce sufficient reasons for delay. The appellant grounded, thus: One, the tribunal erred in law and fact to dismiss the application which challenged irregularities; Two, the trial tribunal erred in law and fact no (sic, not) to extend time will (sic, while) the applicant shown good cause for so doing.

The appellant was represented by Mr. Dickson P. Ndunguru learned advocate while the respondent was enjoying the service of Mr. Raphael

Matola learned advocate. The appeal was sanctioned to be argued by way of written submission.

It is to be noted that the Respondent was supposed to file her reply on 18th April, 2023, but the same is not forthcoming or impending to date.

It is a trite law that failure to file submission as ordered by the court is tantamount to non-appearance of a party on the hearing date.

Therefore, the Respondent is taken to have waived her own right to be heard. See the case of **Hashimu Ndwangila v. Yusta Njechele**, Misc.

Land Case Application No. 692 of 2019, High court of Tanzania at Dar es Salaam, where this Court re-instated the position in the case of **P3525**

LT. Idahya Maganga Gregory vs. The Judge Advocate General,

Court Martial Criminal Appeal No. 2 of 2002 (unreported) where this

Court has this to say:

*It is now settled in our jurisprudence that the practice of filing written submissions is tantamount to a hearing and; therefore, **failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution.** The attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. Court decision on the subject matter is*

bound. Similarly, courts have not been soft with the litigants who fail to comply with court orders, including failure to file written submissions within the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records and are to be disregarded. [Emphasis added]

From the decision quoted above, it can be said that the Respondent by implication waived her right to be heard as aforesaid, therefore the appellant argument will be considered solo.

The counsel for the Appellant submitted all grounds of appeal mutually. The counsel submitted that the Appellant challenge the decision of the trial Tribunal for failure to consider the irregularities. Citing the case of **Amour Habib Salim v. Hussein Bafagi**, Civil Application No. 52 of 2009, Court of Appeal of Tanzania at Dar es Salaam, to support his argument. He also insisted that if the Tribunal would have considered the irregularities it would not leave the same to go uncorrected, he supported his submission with the case of **Chandrak Joshibai Patel v. Republic** (2004) TLR 218. He prayed his appeal to be allowed with cost.

Principally, this appeal was lodged without a sufficient ground of complaint. At the trial Tribunal, the Appellant failed to demonstrate both

reasons for delay and good cause or grounds for extension of time. According to the record of the trial Tribunal, the impugned decision was delivered the way back on 20/11/2015. In the affidavit in support, the Appellant alleged to had have been acquainted with the facts of the presence of the *ex parte* judgement when he was served with a notice to show cause for execution on 19/12/2020. Thereafter the Appellant pleaded delay due to difficulties in economic situation, alleged that he managed to raise a sum of TZs 200,000 being drawing fees for his lawyer on 27/9/2021 when he managed to file the application for extension of time.

From 19/12/2020 to 27/9/2021 it was an extended delay for more than nine months. At any rate an extended delay for nine months purporting for raising legal fees a sum of TZs 200,000/=, is unacceptable and beyond point of tolerance. Indeed, while the Appellant averred that he was busy raising a sum of TZs 200,000/= being cost for drawing pleadings, as per a receipt attachment A1 to the affidavit, but the alleged pleading that is a chamber summons reflect was drawn and filled by Mr. Dickson Ndunguru Advocate. It was expected the lawyer to endorse that he was engaged for drawing only in order to align his deed to the averment in the affidavit and annexure A1.

Above all, the lawyer for Appellant entered appearance on 12/5/2022 and participated hearing. This suggest that the explanation by the deponent in the affidavit that he was busy for almost nine months raising a sum of TZs 200,000/= being fees for drawing pleadings, are misleading information.

In the ruling of the trial Tribunal it ruled that the Appellant was served twice with summons to appear to wit on 14/8/2015 and 18/8/2015, where the village executive officer made a feedback and endorsed that the Appellant had refused to acknowledge summons. This portray that the Appellant had knowledge of proceedings against him at the Ward Tribunal. Therefore, his plea that he become aware of the proceedings after being served with summons or notice to show cause on 19/12/2020, is a concoct. The alleged irregularities (sic, illegalities) on the impugned decision of the trial Tribunal pointed out by the Appellant in the affidavit, alleging that the decision did not depict boundaries, size and location of the disputed farm, to my view could be valid if and only if execution were yet to be carried out. However, the learned chairman ruled that execution of the impugned decree was sanctioned on 8/6/2021 via Application No. 47 of 2020, meaning that the alleged illegalities are illusion and imagination. In fact, the alleged illegalities

have long been overtaken by event, as correctly ruled by the learned chairman.

To crown it all, the Appellant failed miserably to show good cause for extension of time and grounds for delay.

The appeal is dismissed with cost.



E.B. LUVANDA

JUDGE

13/06/2023