

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

CIVIL REFERENCE No. 1 OF 2022

*(Arising from the ruling of the district court of Shinyanga in Misc Application
No. 22 of 2020 dated on the 29.4.2022)*

TITUS MWITA MATINDE.....APPLICANT

VERSUS

DANIEL J SONGOLILE.....RESPONDENT

RULING

14th April & 16th June 2023

MASSAM, J:

This application by the applicant, Titus Mwita Matinde, is made under order 7 (1) (2) 2 and (3) of the Advocates Remuneration Order of the 2015 GN No. 264 Published on 17th July 2015. According to the chamber summon, the applicant prayed to set aside the ruling of the District Court of Shinyanga dated 29th April 2022. The application is supported by the affidavit of Mr. Frank Samweli that advocate for the applicant and the application was objected by the respondent advocate Mr. Phares Focas

Malengo. By the leave of the court the application was heard by way of written submission.

To begin with the respondent notified the court that the applicant failed to comply the schedule of filing written submission for the reasons best known to himself. He stated that the importance of filing written submission was insisted in the case of **Leila Hassan Mavere vs. Maruna Mavere** Misc Civil Application No. 417 of 2019 HC DSM Mlyambina J, which stated that practice of filling submission tantamount to hearing. And the consequence of failure to file written submission was elaborated in the case of **Godfrey Kimbe vrs Peter Ngonyani** Civil Appeal no 41 of 2014 CAT which read that

"Failure of the party to lodge written submission after being ordered a hearing by way of written submission is tantamount of being absent without notice on the hearing date so it is the same as failure to defend or prosecute ones case"

Also he said that in the case of **Jassie and co ltd vs Cement distributors (EA) LTD Misc civil Application No 133 of 2021 H.C Mwanza registry** It was stated that

"It was settled principle that failure to file written submission as ordered by the court is a manifestation of failure to prosecute the matter concerned".

He added by stating that in the said case he cited the case of P 3525 LTI Dahya Maganga Gregory vs. the Judge Advocate general court marshal criminal appeal no 2 of 2002 where the court held that

"It is now settled in our prudence that the practice of filing written submission is tantamount to hearing and therefore failure to file the submission as ordered is equivalent to non appearance at a hearing or want of prosecution the attendant consequence of failure to file written submission are similar to those of failure to appear and prosecute or defend as the case may be....."

So that failure amounted to failure to prosecute, so he dismissed the appeal with costs. Lastly he prayed to this court to dismiss the applicant's reference for want of prosecution.

This court after read over the submission from Mr. Phares Malengo Advocate for respondent is in support with his submission that failure to file

written submission on the dates scheduled by the Court is as good as non appearing on the date fixed for hearing and need not overemphasize.

In this application the applicant and his Advocate failed to submit written submission on the date fixed. They also failed to seek indulgence of the Court to extend the time if there was good reason for not adhering to the Court orders, that failure to file the written submission as ordered by the Court is a manifestation of failure to prosecute the case as elaborated in the case of **Harold Maleko v. Harry Mwasanjala**, DC Civil Appeal No. 16 of 2000, (HC-Mbeya, unreported) in which Makanja, J. (as he then was) held: "I, hold, therefore that the failure to file written submission inside the time prescribed by the court order was inexcusable and amounted to failure to prosecute the appeal. Accordingly, the appeal is dismissed with costs. "

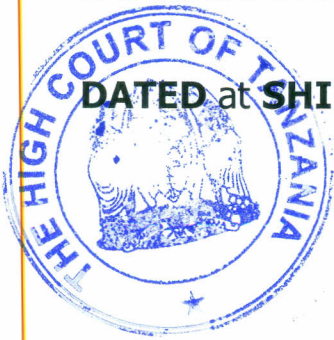
Again in the case of **Geoffrey Chawe v. Nathaniel K. Chawe**, Misc. Civil Application No. 22 of 1998 in which it was held:

"...failure to file written arguments on the part of the learned counsel for the applicant is an omission which constitutes want of prosecution. I would dismiss the application on that account".


According to that failure of applicant to file written submission as ordered by this court is manifestation of failure to prosecute this application and it is equivalent to non appearance at the hearing date without notice or failure to defend his case. So in this there is no other option needed than to dismiss this application.

From the foregoing reasons above, I dismiss the Applicant's application with costs for want of prosecution.

It is so ordered.



DATED at **SHINYANGA** this 16th day of June 2023.


R.B. Massam
JUDGE
16/06/2023