

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE SUB - REGISTRY OF MWANZA)**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 39 OF 2023**

**MASELE MAGASHA & 30 OTHERS.....APPLICANTS**

**VERSUS**

**1. KWIMBA DISTRICT COUNCIL.....1<sup>ST</sup> RESPONDENT**

**2. HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

*May 12<sup>th</sup> & June 5<sup>th</sup>, 2023*

**Morris, J**

On April 5<sup>th</sup>, 2023 Masele Magasha and 30 others filed this application. Order I Rule 8 (1) (2) and section 95 both of ***the Civil Procedure Code***, Cap 33 R.E.2019 are provisions cited to move this court. The applicants are seeking the Court's leave for Masele Magasha to appear and sue for himself and on behalf of 30 others. The basis for such preference is that, all 31 people claim common interest in stalls situated at Ngudu Bus Stand, Kwimba District - Mwanza.

The application is supported by the affidavit deposed by Masele Magasha. A joint affidavit of Denis Kabogo and Subira Mwandabo was filed for the two respondents. On May 12<sup>th</sup>, 2023 I ordered the application be



argued by way of written submissions. The filing pattern thereof was set for submissions in chief; reply submissions; and rejoinder submissions on May 19<sup>th</sup>, 2023; May 26<sup>th</sup>, 2023; and May 29<sup>th</sup>, 2023 respectively. Submissions by the applicant were lodged as scheduled. However, no written submissions in reply were filed by/for the respondents.

I will start with this aspect of non-observance of the court order by the respondents. Not in dispute are four matters. **First**, that the timeframe was set in the presence of all parties upon prayer made by Mr. Paul Dotto, learned State Attorney. **Second**, the applicants filed their joint submissions on prescribed time. **Third**, no submissions were filed for respondents. **Four**, no rejoinder was filed by the applicants; obviously because of the absence submissions in reply. **Five**, court orders are made to be complied with. Lest, the society will sleep under the blanket of lawlessness, disrespect to rule of law and chaos. **Six**, it is the principle of law that, failure to file written submissions amounts to non-appearance for prosecuting or defending the case.

Reference, in support of the sixth **undisputable** position above, is made to ***National Insurance Corporation of (T) Ltd & Another v Shengena Limited***, CoA Civil Application No. 20 of 2007; ***Patson***


**Matonya v The Registrar Industrial Court of Tanzania & Another**, CoA Civil Application No. 90 of 2011; and **Godfrey Kimbe v Peter Ngonyani**, CoA Civil Appeal No. 41 of 2014 (all unreported). From the last case, the below excerpt caps it all.

*"In the circumstances, we are constrained to decide the preliminary objection without the advantage of the arguments of the applicant. We are taking this course because failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case."*

Therefore, apart from the counter affidavit, the respondents did not contest grant of the application. Furthermore, it is evident that paragraph 12 of the applicant's affidavit is unequivocally noted by the respondents under paragraph 9 of the counter affidavit. In effect, thus, the latter parties are not contesting the applicants' deposition thereof. For coherence, the applicants allege, under the stated paragraph; to have common and similar issue at stake and that, on account of their big number, it is unviable for all to appear before the court. Consequently, they are seeking leave for one of them to sue in representative capacity.

As the present application is properly filed under the requisite provisions of the law; and in view of the fact that it is not objected to by the respondent; **leave is hereby given to** Masele Magasha to file a representative suit for and on behalf of the 30 others. Each party to shoulder own costs for this application. I so order.



  
**C.K.K. Morris**

**Judge**

**June 2<sup>nd</sup>, 2023**

Ruling is delivered this **2<sup>nd</sup>** day of **June 2023** in the absence of parties.

  
**C.K.K. Morris**

**Judge**

**June 2<sup>nd</sup>, 2023**

