

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

(MOROGORO SUB-REGISTRY)

AT MOROGORO

MISCELLANEOUS LAND APPLICATION NO. 43 OF 2023

(Arising from Land Appeal No. 30 of 2022 at the High Court of Tanzania, at Morogoro)

OMARY MANYAMBA APPLICANT

VERSUS

ZAITUNI MLATI RESPONDENT

RULING

21th July, 2023

CHABA, J.

The instant application was lodged before this court on 5th September, 2022 under section 47 (1) of the Land Disputes Courts Act [CAP. 216 R. E, 2019] and supported by an Affidavit sworn by Mr. Benjamin Mtwanga, the learned counsel for the applicant. The applicant through his advocate is beseeching this court to grant leave to appeal to the Court of Appeal of Tanzania against the judgment and decree of this court (Ngwembe, J.) dated 2nd August, 2022 in Land Appeal No. 30 of 2022.

On his part, the respondent opposed the application by filing a counter affidavit deponed by herself.



When the application was called on for hearing on 29th March, 2023, the applicant did not attend in court but one Khamis Omary appeared in court and reported that the applicant was sick. On the other hand, the respondent had the legal services of Mr. Bageni Elijah, the learned advocate. By consensus and leave of the court, parties agreed to argue and dispose of the application by way of written submissions. According to the court's scheduled orders, applicant was supposed to file his written submission in chief on or before 12/04/2023, the respondent had to file his reply to written submission in chief on or before 25/04/2022 and rejoinder (if any) had to be filed on or before 3/05/2022.

It is on record that, neither the applicant nor the respondent complied with the orders of this court. It is a settled principle of law that, when the court orders the matter to be heard and disposed of by way of written submissions and a party default to comply with such orders, the omission is tantamount to failure to prosecute the matter as it was enunciated in the case of **P3525 LT Idahya Maganga Gregory Vs. The Judge Advocate General, Court Martial, Criminal Appeal No. 2 of 2002** (unreported) in which the Court observed: -

"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 nonappearance at a hearing or want of prosecution".



Similarly, in the case of **Godfrey Kimbe Vs. Peter Ngonyani**, Civil Appeal No. 41 of 2014 at page 3, the Court of Appeal of Tanzania when dealing with non-compliance with the court's order for filing written submission had the following to state: -

"We are taking this course because failure to lodge written submission after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case".

Additionally, in the case of **NIC (T) Ltd & PSRC Vs. Shengena Ltd**, Civil Application No. 20 of 2007, CAT- DSM (unreported), the Court emphasized on the issue of obeying court's orders, when it held that: -

"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."

As for the consequence of the failure to file written submission, there is a plethora of authorities stating to that effect including the cases of **Harold Maleko Vs. Harry Mwasanjala**, DC. Civil Appeal No. 16 of 2000, (HC – Mbeya); **Hidaya Zuberi Vs. Bongwe Mbwana**, PC. Civil Appeal No. 98 of 2003; **Olam Tanzania Limited Vs. Halawa Kwilabya**, DC. Civil Appeal No. 17 of 1999, and **Abisai Damson Kidumba Vs. Anna N. Chamungu and 3 Others**, Miscellaneous Land

Application No. 43 of 2020 (All unreported) just to mention a few, in which in the later, the Court held inter-alia that: -

"...The law is settled to the effect that a case shall face dismissal for want of prosecution if a party fails to file his written submission on the date fixed by the Court...Consequently under the circumstances, I dismissed the applicant's application with costs for want of prosecution".

Much alike, this court in the case of **Harold Maleko v. Harry Mwasanjala** (supra) (Makanja, J., As he then was) discussed the consequence of disobedience to court's order of filing written submissions and 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."

Having highlighted the position of the law and the consequences of failure to file written submission as ordered by the court, now, I revert to the matter under consideration. As the court record speaks for itself, the appellant for reasons better known by himself he failed to file his written submissions in support of the application in which he is seeking leave to appeal against the impugned decision of this court to the Court of Appeal of Tanzania. Consequently, the respondent had



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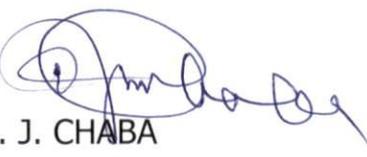
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nothing to reply thereto as he could not file his written submissions in absence of the written submission in support of the application from the applicant. As observed earlier on, the omission is fatal as failure to file written submissions on the date fixed by the court bears the same effect as non-appearance in court on the date the case is fixed for hearing.

In the premises, I dismiss the applicant's application with costs for want of prosecution. Order accordingly.

DATED at MOROGORO this 21th day of July, 2023.




M. J. CHABA

JUDGE

21/07/2023

Court:

Ruling delivered under my hand and the Seal of the Court in Chamber's this 21th day of July, 2023 in the presence of Mr. Bageni Elijah, Learned Advocate for the Respondent and in the absence of Applicant.


Sgd: A. W. MMBANDO

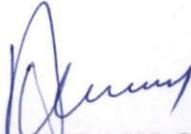
DEPUTY REGISTRAR

21/07/2023

Court:

Right to appeal to the parties fully explained.




Sgd: A. W. MMBANDO

DEPUTY REGISTRAR

21/07/2023