

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO**

LAND APPEAL NO. 23 OF 2023

(Originating from Land Application No. 74 of 2019, In the District Land and Housing Tribunal for Morogoro, at Morogoro)

BETWEEN

AVINTISHI ALMAS MLIGITE.....APPELLANT

VERSUS

REHEMA NASSORO.....RESPONDENT

RULING

19th Oct & 23rd Oct, 2023

M. J. CHABA, J.

Before the District Land and Housing Tribunal for Morogoro, at Morogoro (the DLHT), the appellant herein filed Land Application No. 74 of 2019 against the respondent claiming among other things: One; For declaratory orders that she is the lawful owner of the land in dispute, Two; declaration that the respondent is a trespasser, Three; Costs of the suit and any other reliefs that the DLHT may deem fit and just to grant.

At the culmination of the trial, the DLHT decided in favour of the respondent. Discontented by that decision, the appellant appealed to this court armed with the following grounds of appeal:

1. That, the Honourable Chairperson erred in law and fact by ignoring the strong evidence adduced by the appellant herein on the long-term possession and occupation to the disputed land.

2. That, the Honourable Chairperson erred in law and in fact by relying on inconsistent and insufficient evidence adduced by respondent on proving ownership of the suit land.
3. That, the Honourable Chairperson erred in law and fact by awarding the respondent costs of the suit.

With the above three grounds of appeal, the appellant prayed the court to allow the appeal, order that the judgement of the DLHT for Morogoro, at Morogoro be set aside, and the appellant be declared as the lawful owner of the suit land and any other reliefs the court deems fit to grant.

When the matter was called on for hearing on 10th August, 2023 parties appeared in persons and both enjoyed the legal services from legal trained mind persons. Whereas the appellant was represented by Mr. Abdul Bwanga, learned advocate, Mr. Christopher Mgalla, also learned advocate entered appearance for the respondent. By consensus, parties agreed to argue and disposed of the appeal by way of written submissions.

According to the court's scheduled order, the appellant was supposed to file his written submission in chief in support of the appeal on or before 24/08/2023, the respondent had to file his reply thereto on or before 07/09/2023 and the rejoinder (if any) had to be filed by the appellant on or before 14/09/2023. In the meantime, on 14/09/2023 the matter was set for mention with a view to ascertain if all pleadings were duly filed as ordered by

the court. It is on record that, on 15/09/2023 the matter was placed before Honourable L. B. Lyakinana, Ag. DR for necessary orders and parties did not show up. It was therefore adjourned to 19/10/2023 for mention. However, until the matter was placed before me on that particular date, neither the appellant nor the respondent lodged any document termed as written submissions in compliance with the court's scheduled order dated 10/08/2023.

Addressing the court, the learned counsel for the respondent, Mr. Mgalla highlighted that since the appellant did not file his written submission in chief and served them as per court's scheduled order, that is the reason why the respondent failed to file her reply to the submission in chief by the appellant. He therefore, prayed for the necessary orders.

On his part, Mduya Smart who appeared in this court as the legal representative of the appellant, under the power of attorney stated that he failed to file his written submission in chief on the ground that the learned advocate, Mr. Abdul Bwanga who was supposed to prepare the same and file on time, failed to do so for reasons that I may state that, are better known by the appellant and his advocate.

From the foregoing, the fundamental question for consideration and determination in this appeal is this; what is the effect of failure to file written submission as ordered by the court. It is a trite law that, failure to file written submission when ordered to do so by the court, constitutes one's waiver to his or her right to be heard and non-prosecution of the case, appeal or even an



application. In the case of **Monica Dickson Vs. Hussein J. Wasuha (KNY CHAMA CHA WAFANYABIASHARA)**, PC Civil Appeal No. 4 of 2019 (unreported), it was held *inter-alia* that:

*"It is a settled legal principle that the failure to file written submission as ordered by the court is a manifestation of failure to prosecute the case. **Failure to file written submission on the dates scheduled by the court is as good as non appearing on the date fixed for hearing**". [Emphasis added].*

Similar position was underscored by the Court of Appeal of Tanzania in the case of **Director of Public Prosecutions Vs. Said Saleh Ali [2018] TLR 131 (CA)**, where the Court had the following to state:

*"Before we conclude our decision, we think it is worthy note that arguing on application/appeal by way of written submission is synonymous with presenting oral submission before the court. **Thus, if a party fails to file his/her submission on a scheduled date it is equated as if he/she has failed to appear on hearing date with a consequence of dismissing the matter before a court**". [Bold is mine].*

Equally, this Court in the case of **Harold Maleko Vs. Harry Mwasanjala**, DC Civil Appeal No. 16 of 2000, (HC-Mbeya, unreported), had this to say: -

*"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." [Bold is mine].*

In line with the above cited cases, it is a settled position of the law that, failure to file written submission on the dates scheduled by the court is as good as non-appearance on the date fixed for hearing. In this appeal, as the records speaks, the appellant failed to submit his written submission on the date fixed as per court's scheduled orders and did not bother to come before the court and apply for an extension of time to file the same. Having determined the effect of failure to file written submission as ordered by the court, I now move on to determine the second question.

The next question for determination is, what is the effect of non-appearance by the appellant on the date fixed for hearing. In my considered opinion, the answer is not far-fetched. According to the provision of the law under Order XXXIX, Rule 17 (1) of the Civil Procedure Code, [CAP. 33, R. E. 2019] which is the guiding provision of the law for failure to abide by the dates scheduled by the court on filing the submissions, provides that: -

*"Where on the day fixed or on any other day to which the hearing may be adjourned, **the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed**".*

Undeniably, the appellant failed to appear and prosecute his case. However, considering the circumstance of this case, and the fact that the appellant blamed his learned advocate that he failed to submit his written submission as they agreed upon, I find it reasonable not to dismiss the appeal as the law requires, and instead thereof, I order that the appeal be struck out from the registry of this court on the basis of interest of justice. Each party shall bear its own costs. It is so ordered.

Dated at Morogoro this 23rd day of October, 2023.





M. J. CHABA

JUDGE

23/10/2023


Court:

Ruling delivered under my hand and the Seal of this Court in Chamber's, this 23rd day of October, 2023 in the presence of the Appellant who appeared in persons, and unrepresented and Mr. Chistopher Mgalla, learned advocate for the Respondent.

 *[Signature]*
L. B. LYAKINANA
DEPUTY REGISTRAR
23/10/2023

Court:

Right of the parties to Appeal to the CAT, is fully explained.

 *[Signature]*
L. B. LYAKINANA
DEPUTY REGISTRAR
23/10/2023