

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

LAND APPEAL NO. 28 OF 2023

(Originating from Land Appeal No. 143 of 2020, In the District Land and Housing Tribunal for Morogoro, at Morogoro)

BETWEEN

SALUM SAID MPONDA.....APPELLANT

VERSUS

BLANDINA FRANCIS MUHIGINONGWA.....RESPONDENT

RULING

25th Aug, & 31st Oct, 2023

M.J. CHABA, J.

The instant appeal is born out of the decision of the District Land and Housing Tribunal for Morogoro, at Morogoro (the DLHT) in Land Appeal No. 143 of 2020. A brief factual background of the matter as garnered from the Court's record depicts that: At Kisawasawa Ward Tribunal, the appellant (Salum Said Mponda) sued Blandina Francis Muhiginongwa over a parcel of Land, at the culmination of full trial, the trial Ward Tribunal arrived to the final verdict in favour of the respondent.

Aggrieved by that decision, the appellant preferred an appeal to the DLHT vide Land Appeal No. 143 of 2020, wherein the DLHT upheld the decision of the trial Ward Tribunal which in turn didn't satisfy the appellant, hence this appeal. To exhibit his grievances, the appellant advanced four grounds of appeal, to wit:

1. The District Land and Housing Tribunal erred in Law and in facts for failure to declare the appellant as the rightful owner of the land in dispute.
2. That, the District Land and Housing Tribunal erred in law and facts to award the judgment in favour of the respondent in which in the circumstances the District Land and Housing Tribunal blessed the irregularities made by the Ward Tribunal at Kisawasawa to decide the suit Land Case No. 5 of 2020 when was improperly constituted in terms of women representative members.
3. That, the District Land and Housing Tribunal erred in law and upon facts for failure to consider re-assessment, reevaluation and analyze the evidence of the trial Ward Tribunal and the submission by the appellant in the Land Appeal No. 143 of 2020.
4. The District Land and Housing Tribunal erred in law and upon fact in not considering a long possession and occupation of a land in dispute of which the appellant owned a land in dispute for 40 years.

Based on the above 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, the appellant be declared as the lawful owner of the suit land, and award any other reliefs that this Court may deems fit and just to grant.

When the matter was called on for necessary orders on 25th August, 2023 both parties appeared in persons, and unrepresented. 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 08/09/2023, the respondent had to file his reply thereto on or before 22/09/2023 and the rejoinder (if any) had to be filed by the appellant on or before 29/09/2023. The judgement was scheduled to be delivered on 27/10/2023.

The implementation of this Court order was that, the appellant did not file any submission. On her part, the respondent filed her reply and I am inclined to ask myself as where did the respondent's reply relied from. I say so because, there is nothing in the Court's record showing that the appellant did anything in pursuit of prosecuting his case, like applying for extension of time to file his submission. As such, there was non-prosecution of the appellant's appeal as ordered by the Court upon the parties' consensus.

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 **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". [Emphasis added].

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, it is apparent that 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 so stated the legal principles, I now move to the next question for determination which is, what is the effect of non-appearance by the appellant on the date fixed for hearing. 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**".

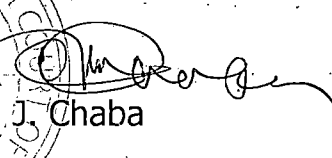
Incontrovertibly, this Court finds that, the appellant has failed to appear and prosecute his appeal. Guided by the above legal position, I would therefore hammer the appeal by issuing an order for dismissal of the same for want of prosecution. However, today on the 31st October, 2023 I decided to summon both parties and inquire from the appellant as to why he failed to comply with the Court's scheduled order. In reply, the appellant was open and narrated that though he managed to prepare his submission in chief and served the respondent on time who in turn filed reply to his submission in chief within time, but he forgot to file the same in Court.

He averred that, being a layperson, he thought that the same had to be filed together with the rejoinder. He stressed that, though he was informed about compliance of the Court's scheduling orders but he found himself confused and could not understand that such submission was supposed to be filed in this Court. He therefore prayed the Court not to dismiss the appeal as he did not deliberately fail to lodge his submission in chief in support of his appeal. On the other hand, the respondent had nothing to comment.

Having considered the appellant's submission and upon considering his physical appearance, demeanour and further taking into account that he correctly prepared his submission in chief and served the respondent on time but forgot to file the same in this Court, I find that the appellant's failure to lodge his submission as ordered by the Court was not caused by negligence, apathy or deliberately.

In the circumstance, I have decided to exercise my discretionary powers not to dismiss the appeal but to struck out with no order as to costs. If the appellant still wish to pursue for his right, he is at liberty to lodge his appeal but subject to the law governing time limits to institute the intended appeal. I so order.

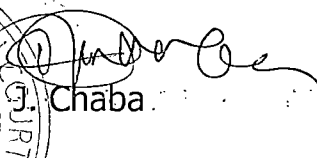
Dated at Morogoro this 31st day of October, 2023.


M. J. Chaba
JUDGE

31/10/2023

Court:

Ruling delivered under my hand and the Seal of this Court in Chamber's, this 31st day of October, 2023 in the presence of the Appellant who appeared in persons, and unrepresented and in the presence of Mr. Selemani Saidi Mchapangozi who appeared on behalf of the Respondent.


M. J. Chaba
JUDGE

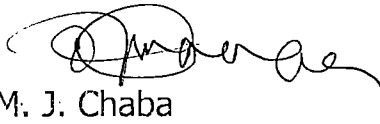
31/10/2023

Court:

31/10/2023

Rights of the parties to appeal to the CAT is fully explained.




M. J. Chaba

JUDGE

Court:

31/10/2023

Rights of the parties to appeal to the CAT is fully explained.

31/10/2023

JUDGE

31/10/2023

