

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 9 OF 2023

(Arising from Land Application no. 86 of 2021, District Land and Housing Tribunal for Morogoro)

PILI RASHIDI KATAMBA..... APPELLANT

VERSUS

PATRICK EXAVERY MBENA 1ST RESPONDENT
AMINA ALLY..... 2ND RESPONDENT
WAZIRI ABDALLAH 3RD RESPONDENT
ISSA MWENE 4TH RESPONDENT
SIMON JOHN 5TH RESPONDENT
ASHA GODFREY 6TH RESPONDENT
REGINA GODFREY MWANSIKU 7TH RESPONDENT
ELIBARIKI MBUHILO ANDREA 8TH RESPONDENT
HAMISI KASWIZA 9TH RESPONDENT
ELIZABETH PETER MSAKI 10TH RESPONDENT
SHABANI KASWIZA 11TH RESPONDENT
JOHN MICHAEL NILAI 12TH RESPONDENT

RULING

Date of last order 13/09/2023

Date of Judgement: 29/09/2023

BEFORE: G. P. MALATA, J

At the District Land and Housing Tribunal (DLHT) for Morogoro, the applicant (the appellant herein) filed Land Application no. 86 of 2021 against the respondents, claiming for Declaratory orders that she is the lawful owner of the disputed land measured five acres located at Mguluwandege, Morogoro Municipality, specific performance and interest, payment of general damages, costs of the application and any other remedy.

The DLHT decided in favour of the respondents, aggrieved thereof, the appellant preferred an appeal on the following;

1. That, the trial District Land and Housing Tribunal erred in law and in fact for failure to evaluate the evidence tendered by the appellant before it makes its own findings and draw its conclusion that the evidence of the appellant was heavier than that of the respondent.
2. That the trial District Land and Housing Tribunal erred in law and in fact for relying on the loss report of the 1st respondent on declaring the respondents the lawful owner of the suit land.

3. That, the trial District Land and Housing Tribunal erred in law and in fact for failure to consider in totality the evidence of the appellant and hence disregarded the appellant's evidence.
4. That, the Trial District Land and Housing Tribunal erred in law and in fact for failure to consider that the appellant allocated by the street government legally until when the respondents herein stated trespassing the applicants land.

The appellant requested the court to allow the appeal, reversed judgement and decree of the trial District Land and Housing Tribunal and declared the appellant lawful owner of the disputed land.

When this matter came for hearing on 09/08/2023 parties by consensus agreed the appeal to be disposed by way of written submissions. As such this court ordered that, the appellant to file his submission in chief on 23/08/2023, respondent to file his reply on 06/09/2023 and rejoinder if any by the appellant to be filed on 13/09/2023. Judgement was scheduled to be delivered on 29/09/2023.

The implementation of this Court's order was that, the appellant did not file any submission. The respondents filed their joint submission stating among others that, they were unable to enter a reply as the appellant filed nothing.

The appellant did not apply for extension of time or state anything as reasons for her failure to file the submission. As such there was non-prosecution of the appellant's appeal as ordered by the court upon parties' consensus.

When this appeal came for judgement on 29/09/2023, the appellant was present in person with Mr. Abdul Bwanga her learned counsel whereas Mr. Jackson Liwewa learned counsel did not appear. The appellant did not say anything to the court.

The fundamental question thereafter was, what is the effect of failure to file written submission as ordered by the court. In fact, it is trite law that failure to file written submission when ordered to do so by a court, constitutes one's waiver to right to be heard and non-prosecution of case/appeal/application.

In **Monica Dickson vs. Hussein J. Wasuha (KNY CHAMA CHA WAFANYABIASHARA)**, PC Civil Appeal no. 4 of 2019, the court stated 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."

Also, in the case of **Ahamadi Musa Njopa and others vs. Mtwara District Council and others**, Misc. Land Application no. 19 of 2022 the court had these to say;

*"Following this conduct, the court asked itself whether failure to file written submission is fatal. The answer is affirmative since what has been done by the first, second and fourth respondents tantamount to **failure to prosecute a case or suit hence the remedy is to dismiss the matter.**"*

In another case of **Director of Public Prosecutions vs. Said Saleh Ali** [2018] TLR 131 (CA) the court

*"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.***

Having the above legal position in mind, it goes without saying that what transpired in this case describes similar situations with what happened in the above cases of the courts has already dealt and came with the afore stated legal position, that failure to file written submission is akin to non-appearance at the hearing and prosecute of appeal/ application.

In the event therefore, the appellant did abandon to file her written submission, which is tantamount to non-appearance at the hearing and failure to prosecute her appeal.

The next question is what is the effect of non-appearance by the appellant on the date fixed for hearing of the appeal? The answer is found under Order XXXIX Rule 17(1) of the Civil Procedure Code, Cap. 33, R.E 2019 which directs 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 really finds that, the appellant has failed to appear and prosecute her appeal. Guided by the above legal position, I therefore order for dismissal of appeal for want of prosecution. Accordingly, the respondents shall have costs.