

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL NO. 138 OF 2022

(From the Proceedings, Judgement and Decree of the District Land and Housing Tribunal for Karatu at Karatu in Land Application No. 54 of 2016)

FRANK BENEDICT (Represented by

SILVIN GADIYE OMBAY under Power of Attorney) APPELLANT

VERSUS

KWASLEMA BOYI 1ST RESPONDENT

FABIANO GWANDU 2ND RESPONDENT

JUDGEMENT

03/11/2023 & 17/11/2023

KINYAKA, J.:

Aggrieved by the decision of the District Land and Housing Tribunal of Karatu in Land Application No. 54 of 2016, which dismissed his application, the Appellant appealed before this Court advancing the following grounds of appeal:

1. That the Respondent's case was so wanting for failure to call important witnesses and as a result the case has not been proved on preponderance of probabilities;

2. That the trial Chairperson misapplied principles of the provisions of Law of Limitation Act, Cap. 89 R.E. 2019 favour the Respondents;
3. That the Chairperson of the District Land and Housing Tribunal erred in law and facts in disregarding the testimony of the Appellant's witnesses;
4. That the records of the proceedings and the resultant judgement and decree were bad in law for the Chairman of the District Land and Housing Tribunal permitted the other members of the Tribunal to cross examine the witnesses;
5. That the trial District Land and Housing Tribunal erred in law in basing its decision of exhibit D1 which its authenticity and relevance was highly contested by the Appellant; and
6. That the transfer of case file to the Chairperson who had concluded hearing and composed the judgement resulted into misapprehension of the facts of the case and the resultant erroneous decision.

When the matter came for hearing on 03/11/2023, Mr. Silvin Gadiye Ombay appeared for the Appellant under the Power of Attorney. The 1st and 2nd Respondents appeared in person, unrepresented. The representative of the Appellant informed the Court that he was ready to proceed with oral submissions. However, the 1st and 2nd Respondents prayed for disposition of the appeal by way of written submissions.

On 03/11/2023, the Court granted the 1st and 2nd Respondent's prayer for disposition of the appeal by way of written submissions. The court issued a scheduling order for the Parties to file their respective submissions which required; the Appellant to file his submissions in chief on or before 06/11/2023, the 1st and 2nd Respondents to file their reply submissions on or before 08/11/2023, the Appellant to file his rejoinder submissions, if any, on or before 10/11/2023. Judgement was scheduled to be delivered on 17/11/2023.

On 17/11/2023, when the appeal came for Judgement, the 1st and 2nd Respondents appeared in person but the Appellant did not appear. The 1st

and 2nd Respondents prayed to the Court to do justice by making a decision against the Appellant. They submitted that the Appellant does not intend to prosecute his appeal because the present appeal is weak and unmeritorious. They prayed for costs of the case.

I have read the record of the Court which reveal that the Appellant did not file his written submissions. The record reveal further that the Appellant has not communicated to the Court of his reasons for failure to file his submissions and his non-appearance before the Court today. According to the record, the Appellant was present on 03/11/2023 when the scheduling order for filing written submissions was made. The Appellant was present on the same day when the Court fixed the present appeal for judgement today.

It is a settled position of the law that failure to file written submissions as ordered by the Court is a manifestation of failure to prosecute the case. It means that failure of a party to file written submissions is tantamount to non-appearance on the date the case is scheduled for hearing. I find the Appellant's failure to file his written submissions on 06/11/2023 as per order of the Court dated 03/11/2023, constitute the Appellant's failure to appear

on the date fixed for hearing. It follows that the Appellant failed to prosecute his appeal before the Court. The position I have taken has been demonstrated in various decisions of the Court which include the cases of **Monica d/o Dickson v. Hussein J. (Kny Chama cha Wafanyabiashara), PC Civil Appeal No. 04 of 2019;** and **Clemence Ipanda (As Administrator of the estate of the late Yona Ipanda) v. Nasary Nathaniel Mushi, Misc. Land Appeal No. 2 of 2019.**

On the basis of the Appellant's failure to prosecute his appeal, I hereby dismiss the appeal for want of prosecution. Costs to follow the event.

It is so ordered.

Right of Appeal full explained.

DATED at ARUSHA this 17th day of November, 2023



H. A. Kinyaka
H. A. KINYAKA
JUDGE