

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**HIGH COURT OF TANZANIA**

**MOSHI SUB-REGISTRY**

**AT MOSHI**

**MISCELLANEOUS CIVIL APPLICATION NO. 01 OF 2022**

*(C/F Probate and Administration Cause No. 07 of 2018 in the High Court  
Tanzania at Moshi)*

**JENIFER FAUSTIN KABERA..... APPLICANT**

**VERSUS**

**MARIAM ALLEN MATOVOLWA.....RESPONDENT**

**RULING**

Date of Last Order: 06.03.2024

Date of Ruling : 16.04.2024

**MONGELLA, J.**

The application at hand is for revocation of letters of administration of the deceased's estate. The applicant herein preferred this application against the respondent seeking for this court to revoke her (the respondent) appointment as administratrix of the estate of the late Allen Shisael Swai. She also sought for costs of the application and any other relief this court may deem fit. Her application was supported by her affidavit and dully contested by the respondent's counter affidavit.

Briefly, the background of the matter is that the respondent, being the daughter of the late Allen Shisael Swai, filed an application for letters of administration of the estate of her late father. The application was filed before this court vide Probate and

Administration Cause No. 7 of 2018. The applicant objected the said application, but never showed up to prosecute her objection. This led the presiding Judge to appoint the respondent as administrator of the estate on 17.06.2020.

The applicant now seeks for revocation of the respondent on the ground that she has failed to legally carry out her duties of administering the estate. She raised that concern claiming that the respondent did not involve other heirs including her as the legal wife of the deceased. Further that, the deceased's family had threatened to vacate her from the matrimonial home she resided with the deceased.

After what I can only term as bumpy proceedings, while an order for substituted service vide circulating newspaper persisted, the respondent appeared before the court on 20.10.2023. The respondent appeared with her counter affidavit on hand. This court therefore, issued an order for the respondent to serve the said counter affidavit to the applicant. It further ordered the applicant to file her reply to the counter affidavit, if any, on or before 27.10.2023. The court also fixed a schedule for filing of written submissions with respect to the application. The applicant was to file her submission on 10.11.2023, the respondent's reply was to be filed on 24.11.2023 and the applicant's rejoinder, if any, on 01.12.2023. The matter was to come for necessary orders on 06.12.2023.

Upon composing the ruling, it came to my attention that the applicant's submission was missing while the respondent had filed her reply. Concerned that there might have been an error on part of the court registry, the court awaited the appearance of parties for ruling and inquired from the applicant as to where the same was. It was on such appearance, as well as, from the records, I found that the applicant only filed her reply to the counter affidavit. The same was filed on 10.11.2023, a date fixed for her to file her submissions. This means, not only did the applicant fail to file her submission on the date fixed by the court, but also filed her reply to the respondent's counter affidavit out of time.

It is well settled that submissions are equivalent to hearings. In that sense, the failure by a party to file submissions on the date fixed, is as good as failure to enter appearance for hearing. See, **Godfrey Kimbe vs. Peter Ngonyani** (Civil Appeal 41 of 2014) [2017] TZCA 1 (21 July 2017) TANZLII whereby the Court of Appeal facing a situation where a party had not filed his submissions, stated:

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

Further, in the case of **National Insurance Corporation of (T) Ltd & Another vs. Shengena Ltd**, Civil Application No. 20 of 2007 CAT at DSM (unreported), the Court of Appeal held:

"The applicant did not file submission on the due date as ordered. Naturally, the Court could not be made impotent by the 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."

Since it is the applicant that failed to file her submissions, her omission amounts to nonappearance and the implication is that the matter should be dismissed for want of prosecution.

The application at hand is therefore dismissed for want of prosecution. Considering the relationship between the parties, I make no orders as to costs.

Dated and delivered at Moshi on this 16<sup>th</sup> day of April 2024.



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L. M. MONGELLA  
JUDGE  
Signed by: L. M. MONGELLA