

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOROGORO SUB-REGISTRY

AT MOROGORO

LAND APPEAL NO. 129 OF 2024

(Arising from the decision of the Kilombero District Land and Housing Tribunal in Land Application No 72 of 2022 delivered on 30th day of November 2023 before Hon E.Mogasa, Chairperson)

KAMBAYA OMARI KAMBAYA..... APPELLANT

VERSUS

NMB BANK PLC..... 1ST RESPONDENT

SANGA INVESTMENT CO.LTD 2ND RESPONDENT

JUDGEMENT

09/04/2024 & 29/05/2024

KINYAKA, J.:

Through the legal services of learned Advocate Erick Felix Chale, the appellant instituted the present appeal seeking to challenge the decision of the District Land and Housing Tribunal for Morogoro, hereinafter "the Tribunal" in respect of the Land Application No. 72 of 2022 which dismissed the appellant's application for want of merit.

In his petition of appeal lodged before this Court on 3rd January 2024, the appellant prayed for the judgment and decree rendered by the Tribunal to be quashed basing on the following grounds of appeal:-

1. That the chairperson erred in law and in fact for failing to properly evaluate oral evidence tendered by the herein appellant during trial; and
2. That the trial chairperson erred in law and in fact for not considering the evidence adduced by the appellant during the hearing in the trial District Land and Housing Tribunal.

On 9th April 2024 when the matter was called on for hearing, Mr. Felix Erick Charle, learned advocate who was appearing for the appellant in the course of the proceedings, did not enter appearance. The appellant appeared in person whereas Advocate Jackson Liwewa entered appearance for the respondents. It was agreed that the appeal be disposed by way of written submissions.

The appellant was to file his submission in chief on 23rd April 2024, whereas the respondents were to file their reply submissions on 6th May 2024. As regards to the rejoinder, the appellant was to file the same on 13th May 2024. However, when the case file was tabled before me for composition of judgment upon the expiry of the dates scheduled for the written submissions, it is the respondent who lodged her reply submission on 30th April 2024 through her Counsel, Mr. Jackson Liwewa. The appellant did not file his submissions.

Mr. Liwewa complained of the appellant's inaction to lodge his submissions within time and prayed for dismissal of the appeal for the appellant's failure to prosecute his appeal relying on the decisions in the cases of **National Microfinance Bank PLC v. Alpha Mgimba and Minjingu Mines and Ampo Fertilizer Ltd, Misc. Civil Application No. 12 of 2017**; and **National Microfinance Bank PLC & 2 Others v. Msafiri Mafung'a Mbacho, Misc. Land Application No. 927 of 2016**.

It is worthy to note that it is now a settled law that the appellant's failure to lodge his submissions in chief in support of his appeal amounts to his failure to enter appearance on the date of hearing of the matter. In the case of **P3525 LT Idahya Maganga Gregory v. Judge Advocate General, Court Martial Criminal Appeal No. 2 of 2002 (unreported)**, it was held:-

"It is now settled in our Jurisprudence that the practice of filing written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequence of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be..."




As for the consequence of nonappearance on the date fixed for hearing of the appeal, the law is plain and clear under Order XXXIX, Rule 17 (1) of the Civil Procedure Code, Cap. 33, R.E. 2019 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."

In the present case, it is undisputed that the appellant failed to appear and prosecute his case without cause. I dismiss the present appeal for failure by the appellant to prosecute the same. Considering the nature of the appeal where the appellant has failed to repay the loan, I make no orders as to costs.

It is so ordered.

DATED at **MOROGORO** this 29th day of April 2024.


H. A. KINYAKA
JUDGE
29/05/2024

