

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
SUB REGISTRY OF SHINYANGA  
AT SHINYANGA**

**CIVIL APPEAL NO. 70 OF 2023**

*(Arising from Civil Revision No.04/2023 from Itilima District Court, and Matrimonial Cause No.05/2019 from Bumera Primary Court)*

**REBEKA YUSUFU NDEKEJA ..... APPELLANT**

***VERSUS***

**KISANDU BULENGETI.....1<sup>ST</sup> RESPONDENT**

**SITA BUSUTI.....2<sup>ND</sup> RESPONDENT**

**MABULA MAKOLO.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*19<sup>th</sup> & 28<sup>th</sup> June, 2024*

**Massam, J.:**

The appellant herein was the 1<sup>st</sup> respondent before Itilima District Court in Misc Civil Application No.04/2023 where the court revised the decision and orders of Bumera Primary Court in Matrimonial Cause No. 05/2019. The genesis of the case is that the appellant petitioned for divorce and division of matrimonial property against one Kija Masasi before Bumera Primary Court in Matrimonial Cause No. 05/2019. In its finding the Primary Court found that the divorce between appellant and one Kija Masasi was granted by another court hence dealt with only division of matrimonial property.

In division of matrimonial property between the parties, among others things the appellant was given 2 acres and 3 acres to Kija Masasi. The respondents who were not the party to the original case claimed that, 5 acres divided belong to them and therefore applied for revision before Itilima District Court which revised the decision and orders of the Bumera Primary Court that was in favour of the appellant and ordered the parties to resolve the dispute in land tribunal.

The Appellant was aggrieved by that decision hence, preferred this appeal raising 4 grounds which are reshaped here under; -

- 1. That, the learned Senior Resident Magistrate erred in law and in fact by disregarding and ignoring to determine first preliminary objection and withdrew it without the consent of the appellant.*
- 2. That, the learned Senior Resident Magistrate erred in law and in fact by receiving and determining the extension of time to file revision out of time while the District Court of Itilima was functus officio.*
- 3. That, the learned Senior Resident Magistrate erred in law and in fact acting on behalf of the High Court of Tanzania at Shinyanga which had powers to extend time to file revision out of the time as*

*the District Court had so such powers as execution processes had already and conclusively closed.*

*4. That, the learned Senior Resident Magistrate erred in law and in fact by disregarding and ignoring that, the District Court of Itilima was not established while the matter at hand already signed by the Senior Resident Magistrate of Bariadi District Court*

*5. That, the learned Senior Resident Magistrate erred in law and in fact by misdirecting himself on 14 days which were attached to the conspicuous places and no one entered appearance to object it, therefore the respondent idea is nothing rather it is an afterthought on their side.*

At the hearing of this appeal, the appellant was unrepresented while the respondent was represented by Mr. Tuli advocate holding brief for Mr. Lugundiga Advocate. Appellant prayed before this court to argue her appeal by way of written submission, the prayers were granted and the court scheduled the dates for filing written submission as follows: -

The appellant was to file submission in chief on or before 29<sup>th</sup> May 2024, the respondent was to file his submission in reply on or before 12<sup>th</sup> June 2024; and rejoinder, if any, from the appellant was to be filed on or before 19<sup>th</sup> June, 2024.

After elapse of the dates which scheduled by this court without the same to be filed, this court calls the parties in order to know the reasons why the court order was not complied with. In her submission the appellant submitted that she was required to file her submission on 29/05/2024 but filed the same on 4/06/2024 and said that she failed to file on time because she lost her father.

In his submission Mr. Tuli Advocate informed the court that the appellant was required to submit her submission on 29/05/2024. So she failed to comply with the court order as per scheduling order, failure to file submission on time is as good as appellant failed to prosecute her case, and its remedy is to dismiss the appeal for want of prosecution, he cemented his submission with the case of **Famari Investment T. Ltd vs Abdallah Selemani Komba** (Misc. Civil Application 41 of 2018) HC Mbeya pg. 3-4, in that case the court held that;-

*"A failure to file written submission as ordered by court is manifestation of failure to prosecute the case of which its outcome is to dismiss the appeal "*. He added that because the appellant is admitting that she failed to bring her submission on time, he prayed her appeal to be dismissed for want of prosecution.

In her rejoinder, the appellant said that she failed to file the submission on time, because she lost her father and therefore, she prayed her appeal to be heard on merit.

This court after been heard the submission of both parties. This court is aware that the non-compliance of the appellant to the court order of filing the written submission is as good as non-appearance when the matter fixed for hearing. It was the wisdom of the Court of Appeal of Tanzania in the case of **Godfrey Kimbe v. Peter Ngonyani**, Civil Appeal No. 41 of 2014 at page 3 that:

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

The same position was underscored in the case of **Abisai Damson Kidumba v. Anna N. Chamungu and 3 Others**, Miscellaneous Land Application No. 43 of 2020 District Registry of Mbeya at Mbeya (unreported), in which the Court observed:

*"...The law is settled to the effect that a case shall face dismissal for want of prosecution if a party fails to file his written submission on the date fixed by the Court... Consequently, under*

*the circumstances, I dismiss the applicant's application with costs for want of prosecution."*

Again, the effect of non-compliance with the court's order of filing written submissions was earlier on stated in the case of **NIC of Tanzania and Consolidated Holding Corporation v. Shengana Ltd**, Civil Application No. 20 of 2007 (unreported), the Court of Appeal of Tanzania at Dar es Salaam, whereby it was held;-

*"The 1<sup>st</sup> applicant did not file submissions on due date as ordered. Naturally the Court could not be made important by a party's inaction. It had to act and it is trite law that failure to file submissions is tantamount to failure to prosecute one's case. In this case the supporting submission was not in place, the Court".*

Notably, the same principle was also elaborated in the case of **Harold Maleko v. Harry Mwasanjala**, DC Civil Appeal No. 16 of 2000, HC-Mbeya (unreported) which held that:-

*"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".* See also the case of **Godfrey Chawe v. Nathaniel K.**

**Chawe**, Misc. Civil Application No 22 of 1998, **Olam Tanzania Limited v Halawa Kwilabya**, Dc Civil Appeal No 17 of 1999 and **Patson Matonya v. The Registrar Industrial Court of Tanzania & Another**, Civil Application No. 90 of 2011 (unreported).

Now, coming to our present case this court made some orders as I elaborated it above but the appellant who was present the said date failed to follow the said orders by filing submission as scheduled. According to that, this court is in support that failure to file submission on the dates scheduled by the court is as good as non-appearing on the fixed date for hearing and need not over emphasize. She also failed to seek indulgence of the court to extent the time if there was good reason for not adhering the court orders. This court is in view that the appellant lost interest to continue to prosecute her case.

As, it has already been settled that a case shall face dismissal for want of prosecution if a party fails to file her written submission on the date fixed by the court as elaborated in **P3525 LT Idahya Maganga Gregory v. The Judge Advocate General**, Court Martial Criminal Appeal No. 2 of 2022 (unreported) the court held that

*'It is now settled in our jurisprudence that the practice of filling written submission is tantamount to hearing and;*

*therefore, failure to file the submission as ordered is equivalent to non-appearance at hearing or want of prosecution. The attendant consequences of failure to file written submission are similar to those of failure to appear and prosecute or defend, as the case may be. Court decision on the subject matter is bound ..... Similarly, courts have not been soft with the litigants who fail to comply with courts orders, including to file written submission within the time framed ordered. Needless to state here that submission filed out of time and without leave of the court are not legally placed on records and are to be disregarded”.*

From the foregoing I dismiss the appellant’s appeal with costs for want of prosecution.

It is so ordered.

**DATED at SHINYANGA** this 28<sup>th</sup> day of June, 2024.



A handwritten signature in blue ink, appearing to read "R.B. Massam".

**R.B. Massam  
JUDGE**