

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISCELLANEOUS COMMERCIAL APPLICATION NO. 27 OF 2020**

**BETWEEN**

**MAWENI LIMESTONE LIMITED.....APPLICANT**

**Versus**

**HC TRADING MALTA LIMITED.....RESPONDENT**

Last Order: 22<sup>nd</sup> April, 2020

Date of Ruling: 16<sup>th</sup> June, 2020

**RULING**

**FIKIRINI, J.**

The applicant, Maweni Limestone Limited brought this application by way of chamber summons under the provisions of Order XXXIX Rule 5(1), (2), (3) & (4), section 68 (e) and section 95 of the Civil Procedure Code Cap 33 R.E 2002 (the CPC), seeking for an order of stay of execution pending the hearing and determination of the Miscellaneous Application No. 39 of 2020 for setting aside the *ex parte* judgment and decree.

The application was supported by an affidavit of Mr. Peter Philip Shuma, a Deputy Manager of Finance of the applicant whereas a counter affidavit of Ms. Anna Fomina opposed the application.

During the hearing the applicant was represented by Ms. Mariam Said assisted by Mr. Alex Nguluma learned advocates while the respondent enjoyed the legal service of Mr Gerald Nangi assisted by Mr. Brian Mambosho, both learned advocates. The Court, ordered the application be argued by way of written submissions, under the following filing schedule: that the applicant to file their written submissions by or on 20<sup>th</sup> May, 2020; reply written submissions by the respondent by or on 27<sup>th</sup> May,2020, to be followed by a ruling scheduled for 16<sup>th</sup> June, 2020.

The applicant who was ordered to file their written submission by or on 20<sup>th</sup> May 2020, did not file their written submission up to 26<sup>th</sup> May 2020, and no explanation was given. To that end, two things definitely occurred that: *one*, there was no compliance to Court order which comes with consequences, and *two*, the respondent had nothing to reply to in opposing the application.

Court orders must be obeyed or else the orders will be ineffective. In the case of **NIC (T) Ltd v PSRC v Shengena Ltd. Civil Application No.20 of 2007, CAT-DSM(unreported)**, faced with the issue the Court of Appeal had this to say:

*“The applicant did not file submission on due date as ordered.*

*Naturally, the court could not be made important by a party’s*

*inaction. It had an act....it is trite law that failure to file*

*Submission is tantamount to failure to prosecute one's*

*case*" [Emphasis mine]

This is more so considering that a party for being the one moving the Court with the application, and for being assisted by learned advocates who besides having professional expertise but are also officers of the Court who are conversant with the rules of procedure in place. Much is certainly expected when professionals' and experts in the industry are involved. It was therefore expected of the applicant and/or her counsels to act accordingly by timely compliance to the Court order.

Filing of written submission is mode of prosecution. With the pile up of the cases and applications, the Court in its endeavor to clear the clog, written submissions became amongst practical options in achieving the goal. Therefore, when the Court orders for filing of written submissions, it is not an optional order but a must. Underscoring this in the case of **National Bank of Tanzania (NBC) Ltd v Sao Ligo Holdings and Another, CA, Civil Application No. 267 of 2015**, faced with the challenge the Court held that:

*"The purpose of filing written submission was to speed up Administration of substantive justice."*

Furthermore, failure to file written submission which has been ordered by the Court amounts, to non-appearance and failure to comply with the rules of written

submission. See **Mariam Suleiman v Suleiman Mohammed, Civil Case No. 27 of 2010**, The position was echoed by the decision in the case of **Said Muratweza Mutwe v Konde Shomary, Civil Appeal No. 1 of 2008**, in which it was held that:

*“Filing submission is tantamount to hearing, failure to file submission has been linked to non-appearance, which implies that parties have waived their rights to present their citation.”*

Therefore, the fact that the applicant in this application failed to file the written submission on time as ordered by this Court can be regarded as the applicant did not enter appearance on the hearing date.

In light of the above, I, find the applicant has failed to prosecute her application after she has failed to comply to the Court order requiring her to file her written submission by or on 20<sup>th</sup> May, 2020, consequently this application is struck out with costs. It is so ordered.



A handwritten signature in black ink, appearing to read "P. S. FIKIRINI".

**P. S. FIKIRINI**

**JUDGE**

**16<sup>th</sup> JUNE, 2020**