

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
MWANZA**

**LAND APPEAL NO. 11 OF 2007
(From the Decision of the District Land and Housing Tribunal for Mara
District at Musoma in Land Application No. 10 of 2005)**

FREDDY WADUGU APPLICANT

VERSUS

HELLEN MARONGORI RESPONDENT

RULING

MWAMBEGELE, J.:

When this matter was called on for hearing on 05.03.2008, by consent of both learned Counsel – Mr. Kahangwa for the Appellant and Mr. Makowe for the Respondent and by leave of the court, this appeal was agreed to be disposed of by way of written submissions. On that date, this court scheduled the submissions dates accordingly. The Appellant was ordered to file his written submissions by 09.04.2008 and the Respondent by 30.04.2008 and rejoinder, if any, by 14.05.2008.

Some four years later; that is on 02.03.2012 to be particular, this court noted that the parties had not filed their written submissions yet. My sister on the bench; Chinguwile, J. ordered that the file be placed before the Judge in Charge for necessary orders. By an order dated 01.10.2012, the Judge in Charge reassigned this matter to me; expectedly for the said necessary orders.

The record before me speaks loudly and clearly that today 15.10.2012 the parties have not filed the submissions as ordered by the court on 05.03.2008; more than four years ago. As it was the Appellant who was supposed to file the submissions first so that the Respondent could reply, I take it that the appellant is no longer interested to prosecute this appeal. There is a line of authorities in this jurisdiction that establish that failure to file written submissions is tantamount to failure to prosecute or defend the case [See *Maria Rugarabamu Vs National Housing Corporation and Another*, Civil Appeal No. 32 of 1996 (HC) (unreported), *Perpetua H. Kirigini & another Vs Dr Msemo Diwani Bakari*, Land Appeal No. 3 of 2005 (HC) (unreported), *Hidaya Zuberi Vs Bongwe Mbwana PC Civil Appeal No. 98 of*

2003 DSM (unreported), *Said Shekhan Vs Radhia Hassan* Land Appeal No. 2 of 2005 DSM (unreported), *Athumani Kungubaya & Another Vs PSRC & TTCL*, Miscellaneous Civil Appeal No. 1 or 2001 (HC) (unreported) and *Buyamba John Vs Adili Bankcorp*, Civil Case No 146 of 2000 (HC) (unreported) to mention but a few].

In the *Perpetua H. Kirigini* case (supra) Lugazia, J. held:

“... up to the writing of this judgment the appellants are yet to file their submissions. This is a very serious omission, which cannot be condoned. This court has had occasions to express its displeasure and made parties in default to suffer the consequences. The hard stand adopted by the court is due to the desire to protect its integrity for, it would be an exposure to public ridicule if its orders are disregarded with impunity without any reaction”

And His Lordship went on:

*“It has been held by this court on very many occasions that the practice of filing submissions has been equated to non appearance or want of prosecution – see **Hidaya Zuberi Vs Bongwe Mbwana** PC Civil Appeal No. 98 of 2003 DSM (unreported)”.*

(Emphasis not mine).

In *Athumani Kungubaya* (supra), Luanda, J. (as he then was) held:

“... court orders should be complied with for the betterment of administration of justice. To allow a party to do things contrary to court orders not only shows disrespect to the court but also creates chaos to the entire process of administration of justice. That thing should not be allowed to occur”.

Speaking of the importance of litigants to follow up their cases once filed, in *Tanganyika Motors Ltd Vs bahadurali Ebrahim Shamji*, Civil Application No. 65 of 2001 (unreported), Ramadhani J.A (as he then was) had this to say:


“A serious appellant would follow up his application and would not stay put. Otherwise unscrupulous parties would use the appellate process as a ruse for employing delaying tactics and deny successful parties the enjoyment of their awards”.

I share the same sentiments with His Lordship in the above quotation. In the instant case, the court has been very lenient on the parties - leaving the parties to control the show. As per the court order of 05.03.2008, as already alluded to in the first paragraph of this ruling, the Appellant was ordered to file his written submissions by 09.04.2008 and the Respondent by 30.04.2008 and rejoinder, if any, by 14.05.2008. After the said order, this matter has been fixed five times for either mention or hearing and the

Appellant appeared only once; that is on 29.03.2012 and the record does not show he offered any explanation let alone a reasonable explanation when he appeared. It seems to me that this appeal has been occupying space in our registry shelves for no justified cause at all. For failure to present written submission for more than four years, the Appellant must have lost interest in his appeal and consequently it must be, and is hereby dismissed for want of prosecution. The same is dismissed with costs.



DAILED at MWANZA this 15th day of October, 2012.


J. C. M. MWAMBEGELE

JUDGE