

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 762 OF 2016**

**SAID SALUM KIMBILILO** (Administrator of the estate of the late Salum Kimbililo.....**1<sup>ST</sup> APPLICANT**

**ALLY ABDALLAH YANGE** (Administrator of the estate of the late Abdallah Yange.....**2<sup>ND</sup> APPLICANT**

**VERSUS**

**BAKARI AMIRI KIMBILILO** (Administrator of the estate of the late Amiri Salum Kimbililo.....**1<sup>ST</sup> RESPONDENT**

**SAID SALUM KIMBILILO**.....**2<sup>ND</sup> RESPONDENT**

**ALLY YANGE**.....**3<sup>RD</sup> RESPONDENT**

**MOHAMEDI YANGE**.....**4<sup>TH</sup> RESPONDENT**

**SAID PEMBE MOKUSO**.....**5<sup>TH</sup> RESPONDENT**

**SAID SALUM KIMBILILO**.....**6<sup>TH</sup> RESPONDENT**

**RULING**

*24/04/2018 & 18/05/2018*

**MZUNA J**

On 13<sup>th</sup> March, 2018 by consent of the parties, this court made an order that hearing should proceed by way of written submission.

Apparently Said Salum Kimbililo (Administrator of the estate of the Late Salum Kimbililo) and Ally Abdallah Yange (Administrator of the estate of the late Amiri Salum Kimbililo) filed an application against Bakari Amiri Kimbililo (Administrator of the Estate of the Late Amiri Salum Kimbililo. They prayed for grant of stay of execution pending the hearing and determination of the objection proceedings as well as to investigate and determine the claims for the objectors and ultimately set aside its judgment and decree issued by Hon. Ndika, J (As he then was) in Land Appeal No. 51 of 2016 (among others).

There is a supplementary affidavit sworn by Laurent Ntanga in support thereof. The schedule was made to file written submissions and reply thereto.

Mr. Lurent Ntanga the learned counsel who represented the applicant did not file same. He said that he failed to do so because he travelled and went to Songea to attend his sick brother who passed away.

The respondent who appeared in person strongly objected such prayed alleging that there was no ticket produced showing that indeed he travelled as alleged.

That there cannot be a burial ceremony which can take more than a month. Above all that his co advocate one Mr. Andwilile could have filed same.

He submitted that the applicant and his advocate are employing a delaying tactic and therefore the application should be dismissed.

In his rejoinder, the learned counsel said that Mr. Andwilile is no longer working in their office.

The point for discussion is what is the fate for the failure of a party to file written submissions within the time set?

As a matter of fact, Mr. Ntanga, the learned advocate never disputed or touched on the point raised by the respondent that the alleged burial ceremony could not have taken over a month.

I would therefore agree with the respondent that the applicants are employing a delaying tactic. This court cannot extend time.

I am aware that “an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time.....” (See **Yusufu Same and Another Vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002 CAT at Dsm page 8 (unreported)).

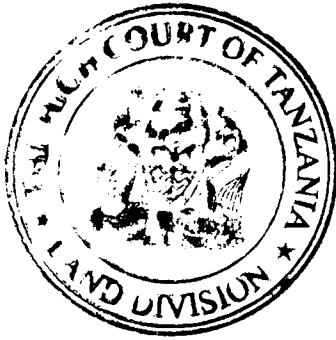
So I would hold that court cannot extend time where the advocate through negligence has failed to file his written submissions within time fixed by the court.


The position of the law is also clear that failure to file written submission is tantamount to failure to prosecute or argue your case. That position was held in the case of **Maria Rugarabamu Vs. National Housing Corporation and Another Civil Appeal No. 32 of 1996** (unreported). It is therefore by necessary implication that the applicants have failed to prosecute or argue their case/application consequently the same is hereby dismissed with costs.

Lastly though in passing, I should make it clear that the prayer for extension of time is not granted for the simple reasons and as it was held in the case of **Godwin Ndewasi Karoli V. Tanzania Audit Corporation** [1995] TLR 200 that:-

*"The rules of the court must Prima facie be obeyed..."*

No extension can be granted otherwise court's orders will be disobeyed for no good or sufficient reasons.



  
**M. G. MZUNA,**  
**JUDGE.**  
**18/05/2018**