

**IN THE HIGH COURT OF THE
UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 1121 OF 2017

MBARAKA MIRAJI.....1ST APPLICANT
SALAMA MIRAJI.....2ND APPLICANT
MAGNUS M. MHICHE.....3RD APPLICANT

VERSUS

OMARY HAMIS UNGAUNGA.....RESPONDENT

Date of Last Order: 13.02.2020
Date of Ruling: 27.04.2020

RULING

V.L. MAKANI, J.

The applicants above are applying for this court to grant extension of time within which to apply for certificate that there is a point of law to be determined by the Court of Appeal of Tanzania against the decision of this Court in Misc. Land Appeal No.11 of 2017 (Hon. Mgonya, J).

The application has been made under section 14(1) of the Law of Limitation Act CAP 89 R.E 2002 (the **Limitation Act**) and it is supported by the affidavit of the 1st applicant authorised to depone on behalf of the other applicants and was opposed by the respondent's counter-affidavit.

With leave of the court the parties argued the application by way of written submissions. The 1st applicant drew and filed the written submissions on behalf of the other applicants and the respondent filed and drew his own submissions.

In the course of going through the submissions by the parties, the respondent has brought to the attention of the court that the applicants did not adhere to the court's order of filing of the written submissions. He said since the applicants have defaulted in the filing of the written submissions it shows that they do not intend to prosecute the application and so it has to be dismissed with costs.

Indeed, according to the court's order of 14/11/2019 the applicants were ordered to file their submission on or before **14/12/2019**, the respondent to file his submissions on or before **14/01/2020** and rejoinder (if any) on or before **28/01/2020**. It is only the respondent who complied with the scheduling order fixed by this court. He filed his submissions on **14/01/2020**. The applicants filed their submissions on **13/01/2020**, almost a month after the date scheduled by the court and without leave thereto.

The consequences of failure by the applicants to file submissions within the scheduled time as ordered by the court is tantamount to failure to prosecute or defend a matter. In the case of **National Insurance Corporation of (T) Ltd and Another v. Shengena**

Limited, Civil Application No.20 of 2007 which was cited with approval in **Godfrey Kimbe vs. Peter Ngonyani, Civil Appeal No.41 of 2014 (CAT-DSM)** where the Court observed that:

"The applicant did not file submission on due date as ordered. Naturally, the Court could not be made impotent by a party's inaction. It had to act...it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."

By failing to file the submissions as ordered by this Court on 14/11/2019, the applicants therefore failed to prosecute their application. The court is therefore entitled to dismiss the application for want of prosecution and I hold as such.

I have noted the applicants' letter dated 20/02/2020 in which they are complaining that the date in which they were required to file their submission on 14/12/2019 was a Saturday hence not an official working day. Indeed, that date was a Saturday, however, the court's order was for the applicants to file their submissions **on or before 14/12/2019** this means the applicants could have filed the submissions before the said date and they had ample time within which to do so as per the order of the court given on 14/11/2019. Nevertheless, even if 14/12/2019 was a Saturday, which as said above is true, then it should have made sense if the said submissions were filed the next working day which was 16/12/2019. But to the contrary, the submissions were filed on 13/01/2020 a month later. Further, on 13/02/2020 when the matter was called for mention with the view to set a ruling date, the 1st and the 2nd applicants were in

court but they did not seek for leave to file their submissions out of time or rather inform the court that they had filed their submissions out of time. They wrote their letter of complaint on 20/02/2020 after the last appearance in court and a date for this ruling was set, this was an afterthought and in my view was intended to cover their lack of seriousness. Subsequently, the filing of the written submissions out of time and without leave of this court is tantamount to the fact that there are no submissions by the applicants before this court and therefore the applicants have failed to prosecute their application.

Having said so, I proceed to dismiss this application for want of prosecution. Considering that both parties are lay persons, each party should bear own costs.

It is so ordered.


V.L. MAKANI
JUDGE
27/04/2020