

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

MISC LAND APPLICATION NO. 492 OF 2020

(Originating from the decision of the High Court of Tanzania (Land Division) at Dar es Salaam in Misc Land Application No. 956 of 2018 delivered by Hon. F. K. Manyanda, J on 5th day of August, 2020)

MARIAM SHOMVI.....APPLICANT

VERSUS

LAURENT KIYENZE.....RESPONDENT

RULING.

S.M. MAGHIMBI, J:

The application beforehand is for review and is lodged under the provisions of Section 78, 95, 96 and 97 and Order XLII Rule 1(a) (b); (2) and (3) of the Civil Procedure Code, Cap. 33 R.E 2002 ("The CPC") and Section 2&5 and Part II of the Judicature and Application of Laws Act, Cap. 358 R.E 2002. The applicant's ground of review is that this court mistakenly and apparently erred in law and facts on the face of records and indeed was misdirected in not discovering that the applicant herein filed written submissions on 23/07/2020 as per the order of the court dated 15/07/2020. She further challenged the court in not discovering that the applicant was not served with

the documents by the respondent until on 15/07/2020 when the court ordered service to be effected to the applicant.

On the above grounds, the applicant is praying for this court to review and set aside its ruling and Order in Misc. Land Application No. 956/2018 dated 05/08/2020, reverse and vacate it and thereafter consider the applicant's submissions therein. The application was disposed by way of written submissions. Before me, the applicant appeared in person and unrepresented while the respondent was represented by Mr. Emanuel Machibya, learned Advocate, who also drew and filed his submissions.

In her submissions to support the application, the applicant submitted that in its ruling, the court held that the applicant did not file her submission in reply on 23/07/2020 by virtue of the order of the court granted on 15/07/2020 as stated in the submission in reply in that application. She argued that she was never served with the documents in time for her to respond and that she even informed the court on that situation and that is why on the 15/07/2020, the court granted extension of time to file reply as this was the period during the pandemic Covid-19. She concluded that since the documents are available, her prayer is that the court should review its decision and set it aside as the respondent never complied with decision or ruling by Hon. Judges Mjemas and Kerefu (as they then were) and that there is no decision delivered by the tribunal on 31/08/2015, a date which is misleading the whole case.

In reply, Mr. Machibya pointed out that the applicant's submissions were filed out of the time ordered by the court, that she was to file

her submissions by 26/11/2020. He then submitted that on the 24/03/2020, the application was ordered to be argued by way of written submissions and that the person representing the applicant on that day prayed that the submissions be made to Mr. Juma Mtatiro, learned advocate. That when the time to serve the respondent came, the advocate had shifted offices and contacts not available.

He submitted further that there is no error committed by the court, but the applicant failed to comply with the order of the court issued on 24/03/2020 as they did not make any follow ups on the matter. At this point, I have noted that Mr. Machibya is not consistent in his submissions, he is mixing the arguments on the application which is a subject of this review application and the issues in this application. For instance at the conclusion, he is arguing that the applicant did not file any submission as ordered by the court where she was to file her submissions by 26/11/2020 and instead the submissions were filed on the 08/12/2020. He then prayed for the dismissal of the application for lacking merits. The applicant did not make any rejoinder submissions.

What I have gathered from Mr. Machibya's submissions is that the appellant filed the submissions in support of this application out of the time prescribed by the court. As per the records, on the 12/11/2020, the court ordered hearing by written submissions. The applicant's submissions were ordered to be filed by 26/11/2020 and the respondent's reply by 10/12/2020. According to the records, the applicant filed her submissions in chief 08/12/2020 but there was no

any leave granted by this court for her submissions to be filed out of the prescribed time. She just filed at the time she pleased. The exact same thing was at issue in the Misc. Land Application No. 956/2018 which the applicant is seeking review of.

Going through the ruling in the challenged Misc. Land Application No. 956/2018, the court held on page 3 of the judgment:

"The applicant complied by filing written submissions in support of the application, the respondent did not file any.

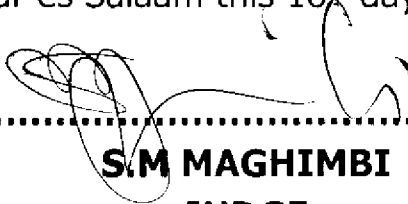
In law a party to a case who fails to file submissions is taken to have waived his right to be heard. My brother Hon. A. Mohamed; 9as he then was) in the vase of Lucy Kasoma Vs. Zaina Abdallah Making'inda, Misc Land Application No. 72 of 2019 when he was confronted with a situation akin to this one, held that:

Failure to file written submissions as ordered is akin to failure to appear on hearing date and bears similar consequences"

As per the records above, the appellant was to file her submissions in chief by 26/11/2020 and the respondent's reply by 10/12/2020. The applicant's submissions were filed on the 08/12/2020 which is more than 10 days later and no leave of the court was granted to that effect. As held in the cited case above, failure to file the submissions on time is tantamount to waiving right to be heard or failing to appear on the date that the matter is scheduled for hearing. The consequences are the same, and it is nothing but the dismissal of the matter.

On those observations, it is conclusive that the applicant failed to prosecute her case by failing to file her submissions on the date that was scheduled by the court. The same is equivalent to failure to appear on the date set for hearing. Consequently, this application is hereby dismissed with costs.

Dated at Dar es Salaam this 18th day of March, 2021


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S.M MAGHIMBI
JUDGE