

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

MISC. LAND CASE APPLICATION NO. 514 OF 2020

(Arising from Land Case No. 166 of 2012)

1. AYUBU SALEHE CHAMSHAMA 2. ESHE KHAMIS	} APPLICANTS
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VERSUS

1. DIAMOND TRUST TANZANIA LIMITED 2. SAC HOLDINGS LIMITED 3. SUMA JKAT AUCTION MART 4. ABDALLAH H. ABEID T/A TAMBAZA AUCTION MART & GENERAL BROKERS	} RESPONDENTS
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RULING

S.M KALUNDE, J:-

On 25th September, 2020, the Applicants, approached this Court with an application for extension of time for the applicants to apply for review of the decree found on a Deed of Settlement. The application was preferred under **section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019** and supported by a joint affidavit sworn by **AYUBU SALEHE CHAMSHAMA** and **ESHE KHAMIS**, the applicants.

Subsequently, parties appeared before me on 05th October, 2020 and orders to file the respective pleadings were made. Additionally, it was ordered that the application be disposed by

way of written submissions and the schedule for filing submissions was made. The proceedings of the respective date are as quoted below:

"Date: 05/10/2021

Coram: S.M. Kalunde , J.

For Applicant: Wandiba, Adv.

For Respondents:

1st: Wandiba, Adv. holding brief for Malimi Adv.

2nd: [Soud Chamshama].

3rd:

4th: } ***Absent***

RMA: Aisa.

Wandiba, Adv: Service to the 3rd and 4th respondents has yet to be effected. We have filed two applications, Application No. 541 seeking for extension for stay of execution pending determination of the application for extension of time.

Court: In view of the dispositions in the affidavit and chamber application, I make the following orders:-

Order: 1. 3rd and 4th respondents to be served within 3 days from today;

2. Respondents to file their Counter affidavit within 3 days from today;

3. Reply, if any, to be filed by 22nd October, 2020;

4. Application to be argued by written submission in the following schedule;

(i) Submission in chief to be filed by 29/10/2020;

(ii) Reply, submission to be filed by 6/11/2020;

*(iii) Rejoinder, if any by
11/11/2020*

*(iv) Submission to be limited to 4
pages, in Tahoma size 13.*

5. Necessary orders on 30/11/2020.

SGND

JUDGE,

05/10/2021."

In accordance with the above orders the applicants' submissions in chief were to be filed by 29th October, 2020 and parties were to appear for necessary orders on 30th November, 2020. However, the applicant did not file their submission in chief and as a result the respondents could not file their response. The matter was subsequently called in for mention before the Honorable Deputy Registrar on 30th November, 2020 and 25th March 2021.

Later, on 02nd June, 2021, when parties appeared before me, I enquired to the learned counsel for the applicants, **Mr. Frank Michael**, as to why the orders dated 05th October, 2020 were not complied with. He submitted that, a disagreement arose between the applicants and their advocate who was initially representing them, as a result the previous advocate refused to file the respective pleadings and written submissions. He added that when they subsequently appeared before Hon. Deputy Registrar on 30th November, 2020 and 25th March 2021 they could not make the necessary prayers. He then prayed for extension of time to file the submissions in chief.

The counsel for the 1st respondent and the representative of the 2nd respondent did not object to the extension of time. In fact,

the representative of the 2nd respondent declared his interest in the applicants' case. He stated that the 1st applicant was his father and that there was indeed a disagreement with the advocate and he was the one who followed up for the case file from the previous advocate in vain.

I took the liberty to invite the parties to address the Court on the subject in acknowledgement of the rule that court orders, when made, are to be complied, the rationale being that they are made to regulate the smooth conduct of proceedings.

As intimated above, the orders issued on 05th October, 2020 were very clear on the obligation of the parties. On the day, the Applicant were being represented and so did the 1st and 2nd respondent. Surprisingly, those orders were not complied with and even the said failure to file the submissions was not notified to the Court prior to the respective date. The applicant have failed to provide any special circumstances or reasons that delayed them in complying with the orders of the Court. Mr. Michael could not even state when they were engaged or what steps did the applicants take to comply with the orders.

It is trite law in our jurisdiction that, court orders are to be complied with by the parties without failure. Time and again courts have expressed their distaste with the disobedience of court orders by litigants. That view was affirmed in various decision including the case of **Olam Tanzania Limited vs. Halawa Kwilabya**, DC Civil Appeal No. 17 of 1999; **P3525 COL. Idahya Maganga Gregory vs. The Judge Advocate General**, Court Martial Criminal Appeal No. 4 Of 2002, the Court Martial

Appeal Court at Dar es Salaam and **Gift Erick Mbowe vs. Reuben Pazia and Scandanavia Express Ltd**, Commercial Case No. 67 of 2005, High Court, Commercial Division all unreported.

In **Olam Tanzania Limited** (supra) the Court observed that:

"Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or it will be so chaotic that everyone will decide to do only that which is convenient to them. In addition, an order for filing submission is part of hearing. So if a party fails to act within prescribed time he will be guilty of in-diligence in like measure as if he defaulted to appear...This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."

Prudence dictates that, when a court prescribes a certain action to be taken in a particular period or particular manner, that action must be carried out in the time or manner prescribed by the court, otherwise what would be the meaning of issuing orders. That is far from saying that parties may not be precluded from complying with such time limit or manner by some reasonable excusable circumstances. If that happens, a party relying on the excuse must demonstrate, before the court, that he had a genuine cause in failing to comply with court orders or at least, he took reasonable steps in complying with the orders.

In the present case an order to file submissions was clearly made to the parties and their advocates. It is also not in dispute that, despite such clear orders, the applicant failed to comply with the said orders. The next question is what are the consequence non-compliance with the Court orders.

It is trite that, the practice of filing submissions is tantamount to hearing and, therefore, failure by a party to file the submissions as ordered by the court is equivalent to non-appearance at a hearing or want of prosecution. In **P3525 COL. Idahya Maganga Gregory** (supra) the appellant's submissions were filed, without leave of the Court, on 26/10/2006 instead of 25/10/2006. Having noted that the appellants counsel had lodged the submissions late without even bothering to apply for extension of time to file them if there was good cause for the delay, the Court (**Oriyo, J** as he then was) observed at page 3 of the typed ruling, thus:

"There is no dispute that court orders are made with the basic purpose of regulating proceedings. This Court had time and again expressed its distaste for disobedience of court orders by litigants"

Then the Court went on to add that:

*"It is now settled in our jurisprudence that the practice of filling written submissions is tantamount to hearing and, therefore, failure to file the submissions as ordered is equivalent to non-appearance at a hearing or want of prosecution. **The attendant consequence of failure to file written submissions [are] similar to those of failure to appear and prosecute or defend, as the case may be. Court***

decisions on the subject are abound...similarly, courts have not been soft with the litigants who fail to comply with court orders, including failure to file written submissions within the time frame ordered."
[Emphasis mine]


The consequence of failure to file written submissions was stated in **Geofrey Chawe vs. Nathaniel K. Chawe**, Misc. Civil Application No. 22 of 1998 where it was held that:

"...failure to file written arguments on the part of the learned counsel for the applicant is an omission which constitutes want of prosecution. I would dismiss the application on that account."

A similar view was taken by **Mackanja J.** in **Harold Maleko v. Mwasanjala**, Civil Appeal No. 16 of 2000, DSM, (unreported) where after holding that the failure to file written submissions inside of the time prescribed by the court order was inexcusable and amounted to failure to prosecute the appeal. The Court went on to dismiss the appeal costs. I find no reason from departing from the above positions.

That said, the application is dismissed with costs. It is so ordered.

DATED at DAR ES SALAAM this 02th day of JUNE, 2021.

 
S.M. KALUNDE
JUDGE