

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

LAND APPEAL CASE NO. 110 OF 2020

(Originating from Land application No. 73/2017 the District Land and
Housing Tribunal of Ilala District).

SIMON HAULE 1ST APPELLANT
GODWIN MUHONYO 2ND APPELLANT
HOSSIAN JOSHUA 3RD APPELLANT
JOSEPH MOYO 4TH APPELLANT

VERSUS

EXPLASIA GAITANO NGASOMA RESPONDENT

RULING

Date of Last Order: 22/7/2021

Date of Ruling 12/8/2021.

A. MSAFIRI, J

The appellants Simon Haule, Godwin Muhonyo, Hossian Joshua and Joseph Moyo, filed this appeal against the decision of the District Land and Housing Tribunal of Ilala District, Dar es Salaam.

On 20th April, 2021 this appeal came for mention. Mr. Ignas Safari, advocate for the appellants prayed for the leave to amend the memorandum of appeal within 7 days. The leave was granted by the Court and the counsel for the



appellants was ordered to file the amended plaint by 27th April 2021. The Court then, in presence of both parties, gave an order that the hearing of the appeal shall proceed by written submissions. The Court then scheduled the dates for filing written submissions as follows; the appellants were to file submission in chief by 07th May, 2021 (having amended the memorandum of appeal); the respondent was to file submission in reply by 21st May, 2021; and rejoinder, if any; from the appellant was to be filed by 28th May, 2021.

The matter came twice before this Court for mention i.e. on 8th July, 2021 and 22th July 2021. However, until 12th August, 2021 when this matter came for necessary orders, the appellants had not filed their submissions in chief. Furthermore, the appellants and their advocate were absent without notice.

On this date, when the matter came for necessary orders, Mr. Ambrose Nkwera, advocate for the respondent entered an appearance. As already said, neither the appellants nor their advocate was in Court.

Mr. Ambrose, submitted before this Court that there was an order of the court dated 20th April, 2021 for the case to proceed by way of written submissions. That the appellants were to file their written submission in chief by 7th May, 2021 and the respondent to file the reply by 21st May, 2021. Mr. Ambrose argued that, since the date of order until to date, the appellants have not filed their submissions in chief. He pointed that, the failure of the appellants to file the submissions as ordered by the Court means that the

appellants have failed to prosecute their case. He cited the case of **Monica d/o Dickson vs. Hussein J. Wasuha (Kwa niaba ya chama cha Wafanyabiashara) P.C. Civil Appeal No. 4 of 2019 (HC at Mbeya Registry, unreported)**, where it was held that; failure to file written submission constitute want of prosecution.

Since the appellants have failed to file their written submissions, Mr. Ambrose prayed for this Court to dismiss the appeal and the costs to be borne by the appellants.

Having considered the submissions by the advocate for the respondent, it is crystal clear through the court records that the appellants have failed to comply with the Court order of 20th April 2021 by their failure to file their submissions in chief until to date.

It is a settled legal principle that the failure to file written submission as ordered by the court is a manifestation of failure to prosecute the case. The appellants and their advocate failed to submit written submission on the date fixed, something which is tantamount to non-appearance on the date of hearing. This legal position has been settled by the Court on numerous decisions among them being the case of **Monica D/o Dickson vs. Hussein J. Wasuha (supra)** which was referred by the advocate for the respondent.

I agree with the principle set in the **Monica d/o Dickson Case**, in which various cases were referred, among them the case of **Harold Maleko Vs.**

Harry Mwasanjala, DC Civil Appeal No. 16 of 2000 (HC- Mbeya, unreported), where Makanja, J (as he then was) held that;

"I hold therefore that the failure to file written submission inside the time prescribed by the court was inexcusable and amounted to failure to prosecute the appeal"

The Court can however grant extension and reschedule the orders for filing submissions upon sufficient cause being advanced. However, as I have observed earlier hereinabove, the appellants and their advocate did not enter the appearance before the court and without giving notice.

Under the circumstances, I have no choice but to dismiss the appellants appeal for want of prosecution.

The appeal is hereby dismissed with costs.



A handwritten signature in blue ink, which appears to read "A. Msafiri", is written over a horizontal line.

A. MSAFIRI,

JUDGE

12/8/2021