

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

LAND APPEAL NO.18 OF 2021

(From Land Application No. 495 of 2019, by the District Land and Housing Tribunal for Kinondoni.)

**ZAINA MKOMBE.....APPELLANT
VERSUS**

FATUMA ALLY MKOMBE.....RESPONDENT

R U L I N G

Date of Last Order: 20.09.2022

Date of Judgment: 21. 09.2022

T. N. MWENEGOHA, J.

The appeal arose from the decision of the District Land and Housing Tribunal of Kinondoni District, herein called the trial tribunal. The dispute is over a land, located at Plot No. 552, Block D, Sinza Area, within Ubungo Municipality and Dar Es Salaam Region. Both parties claiming ownership of the said land. Their dispute reached the trial tribunal and after a full trial, the case was decided in favour of the respondent. Hence this appeal was filed based on the following grounds; -

- 1. That, the trial tribunal erred in law and fact when it failed to evaluate properly the evidence by the appellant, as a result it reached to a wrong decision.**
- 2. That, the trial tribunal erred in law and fact for failure to consider the documentary evidence of DW2, regarding the sale and purchase of the disputed property to the appellant.**

3. That, the trial tribunal erred in law and in fact for not having determined the issue of the counterclaim.

It was ordered for the appeal to proceed by way of written submissions. The schedule was for the appellant's submissions to reach the court on the 5th of April, 2022, followed by a reply submission from the respondent on the 27th April, 2022 and a rejoinder from the appellant by 9th May, 2022.

On the 9th of May, 2022, when the matter came for mention, this court noted that, the appellant failed to file her written submissions as ordered. Actually, there was no submissions at all being filed in the court by the appellant. The appellant's counsel on the other hand contended that he did file the submissions as ordered. Owing to such circumstances, the court ordered the parties to address it on the issue so raised. The parties complied to the order and addressed the court through written submissions. Mussa Kiobya, learned counsel represented the appellant while the respondent was represented by Advocate Richard Godlisten Kimaro.

In his submissions, Mr. Kiobya contended that the submissions in chief by the appellant were filed within time as ordered, on the 5th April, 2022 as per billing history, Control Number, 991400630556, and a Exchequer Receipt number, 24525475. He requested this court to verify the said information through the e-payment system and receipt book.

In reply, Mr. Kimaro for the respondent insisted that, the appellant's submissions were not filed within time. He referred the court to a number of cases including the case of **Tanzania Breweries Ltd vs. Edson Dhobe & 19 Others, Misc. Civil Application No. 96 of 2000, High Court of Tanzania at Dar es Salaam.**

In rejoinder, the appellant's counsel reiterated his submissions in chief.


I have considered the submissions by parties as far as the issue at hand is concerned. The arguments by the appellant's counsel are that the submissions in chief in support of the appeal were filed within time. He further requested the court to cross check information from the e-payment system and receipt book to prove the same. However, he did not supply this court with the copies of the receipts which he was given by this court when he made the said payments for filing his submissions. The appellant has given factual claims which needed to be proved, instead of providing proof for the claims, he instructed the Court to go and look through ex-payment system and receipt books.

In my view, I think it is not the duty of this court to dig out the evidence in favour of any party to the court. In absence of such evidence, the claims by the appellant's counsel remain unproved.

Hence, I'm obliged to believe that, the appellant failed to honor the schedule given by this court with regard to the filling of the written submission in support of her appeal. That being the case, I find the appellant at fault for her failure to prosecute her appeal, see **Tanzania Breweries Ltd versus Edson Dhobe & 19 Others, supra.**

In the end, the appeal is dismissed for want of prosecution and costs shall follow the event.




T. N. MWENEGOHA

JUDGE

21/09/2022