

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL NO. 111 OF 2020

(Originating from Land Application No. 213 of 2011 of the District Land and Housing Tribunal for Ilala District)

SISYA MASSAWEAPPELLANT

VERSUS

TANZANIA ELECTRICITY SUPPLY

COMPANY LTD (TANESCO)..... RESPONDENT

RULING

Date of Last Order: 04/04/2022

Date of Ruling: 28/04/2022

DR. MWENEGOHA, J:

Originally the appellant filed the suit at the District Land and Housing Tribunal for Ilala at Ilala (Tribunal) as application No. 213 of 2011. The application was heard on merits and it was partly allowed in the sense that the 1st prayer on declaring applicant the lawful owner of the suit land was granted as it was not disputed, whereas the other prayers of declaring the respondent as a trespasser and eviction order and removal order of electric poles erected on the suit property and be placed on the place to be agreed upon and other prayers of damages were not granted for lack of proof.

The applicant dissatisfied with the said decision preferred this appeal with

four grounds of appeal as indicated in his memorandum of appeal.

In reply to the memorandum of appeal the respondent through Wemael Emanuel Msuya, legal officer raised three points of preliminary objection namely: -

- i. That this application is bad in law for non-joinder of Attorney general
- ii. That this application is hopelessly time barred.
- iii. That this application is incompetent for noncompliance with the law.

The preliminary objection was heard by way of written submission and both parties filed their submission as scheduled.

Upon my perusal when I was composing ruling, I noted that in rejoinder the respondent's legal officer dropped the 1st and 3rd points of preliminary objection for the reasons that there was an oversight.

When the matter came for ruling on 04/4/2022 I address the parties on the dropped preliminary objection, I order them to address me on the competence of this appeal when the Attorney General is not party to.

We agreed on the filing scheduled whereby I ordered the filing of the submissions in the following schedule; appellant to file his submission on 8/04/2022, respondent to file reply on 14/4/2022 and rejoinder if any be filed on 20/4/2022.

Until yesterday (27/4/2022) when I was composing this Ruling no any part has filed submission as ordered. This is as good as failure to appear when the matter is fixed for hearing and its effect it is dismissal of the

appeal. This position was well stipulated in the case of **Famari Investment (t) Ltd v. Abdallah Selemeni Komba, Civil Application No. 41/2018**, where Mongela J, had this to say,

"in fact I agree with Mr. Chopa submission that failure to file Written submission on the dates scheduled by the Court is as good as non-appearing on the date fixed for hearing and need not overemphasized. The applicant and his advocate failed to seek indulgence of the court to extend the time if there were good reason for not adhering to the court orders"

The parties herein neither filed their submission nor prayed for extension of time to file their submission not even notifying the court on their reason to fail to adhere with the court order. The parties did not adhere to the court orders which are supposed to be respected as stated in the case of **Tanzania Harbors Authority V. Mohamed (2002) TLR 76** where the court comment that,

"The court dully bound to make sure that rules of the Court are observed strictly and cannot aid any party who deliberately commit lapse"

Therefore, this appeal is dismissed for those reasons. No order as to costs for the fact that no part filed their submission.





T. N. MWENEGOHA
JUDGE
28/04/2022