

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

**LAND APPEAL NO. 263 OF 2023**

*(Arising from Land Application No.144 of 2023, of the District Land and Housing  
Tribunal for Ilala)*

**JULIUS G. KIBAJA.....1<sup>ST</sup> APPELLANT**  
**MGAYA K. MHINA.....2<sup>ND</sup> APPELLANT**  
**MARIAM ALLY.....3<sup>RD</sup> APPELLANT**  
**SALHA KIBAJA.....4<sup>TH</sup> APPELLANT**  
**ALLY A. SALUM.....5<sup>TH</sup> APPELLANT**  
**MAULID N. SIHABA.....6<sup>TH</sup> APPELLANT**

**VERSUS**

**KHALID ALLY KASSIM.....RESPONDENT**

**J U D G M E N T**

*Date of Last Order: 03.08.2023*

*Date of Judgment: 29.08.2023*

**T. N. MWENEGOHA, J.**

This appeal has its roots from the District Land and Housing Tribunal for Ilala, herein after called the Trial Tribunal. The appellants who were also applicants before the Trial Tribunal, sought for a declaration among others, against the respondent that, his purchase of house located at Nzasa Street, Plot No. 28, Block J, Ilala area, with Tittle No. 79915, is null and void. The respondent on the other hand, successfully objected the case against him

at the Trial Tribunal, hence this appeal. The following are the grounds of appeal as given in the Memorandum; -

- 1. That, the Hon. Tribunal erred in law and facts, by dismissing Land Application No. 144 of 2023, basing on evidence while dealing with notice of preliminary objection.**
- 2. That, the Hon. Tribunal erred in law and fact for failure to consider that, tenants have interests on the disputed land.**

The appeal was heard through written submissions. Advocate G.S Ukwonga, appeared for the appellants, while the respondent was represented by Advocate Haider Twahir Mwinyimvua. Both parties filed their submissions accordingly.

Upon perusal of the file I came to realise that the appellants did not comply to the orders of the Court and did not file their submissions in time. This delay was also complained against by the respondents in their written submission.

They stated that the appellants filed their submissions on the 11<sup>th</sup> August 2023 instead of 10<sup>th</sup> August, 2023 as ordered. Hence, they failed to comply with the Court orders. That means, they failed to prosecute their case as stated in **Godfrey Kimbe vs. Peter Ngonyani, Civil Appeal No. 41 of 2014, Court of Appeal of Tanzania at Dar es Salaam**, citing in approval the case of **National Insurance Corporation of (T) Ltd & Another versus Shengena Limited, Civil Application No. 20 of 2007y, Court of Appeal of Tanzania (unreported)**.

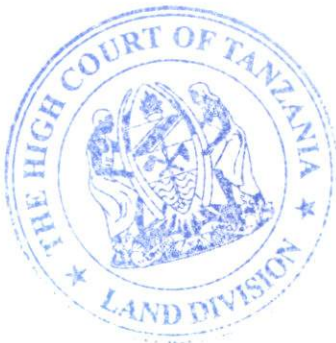
In rejoinder, the appellants' counsel addressed the issue of delay in filing the submissions in chief. They admitted that, the same was filed late by one day, instead of being filed on the 10<sup>th</sup> of August 2023, they were filed on

the 11<sup>th</sup> August 2023. However, the delay was inadvertence of the appellants due to late appearance at the window for filling the said document.

Sadly, the rules of procedure and practice as enshrined in our Courts do not allow me to proceed with determining the merit of Appeal, owing to the fact that, the appellants failed to present their written submissions within time as ordered. Their learned counsel in his rejoinder admitted that, the submissions were filed a day after the scheduled date, on the 11<sup>th</sup> August 2023. He has also stated the reasons that caused the delay. However, at this stage, I cannot consider the said reason as there is a place and time for everything to be dealt with, as regulated by law. The remedy available as far as the fate of this appeal is concerned is a dismissal, as rightly argued by the respondent's counsel. This is a settled position and it has been discussed in a number of authorities including the case of **Godfrey Kimbe versus Peter Ngonyani**, (supra).

Eventually, I dismiss this appeal for want of prosecution. No order as to costs.

Rights of Appeal Explained.



  
**T. N. MWENEGOHA**

**JUDGE**

**29/08/2023**