

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 458 OF 2023**

*(Arising from the decision of the District Land and Housing Tribunal for Ilala in Misc. Land Application No.155 of 2022 dated 31<sup>st</sup> January, 2023)*

**FREDRICK WINSTON KITWIKA.....1<sup>ST</sup> APPLICANT**

**GODFREY ARTHUR URASSA.....2<sup>ND</sup> APPLICANT**

***VERSUS***

**RAPHAEL LEFI DAVID (under power of attorney in favour of**

**ISIHAKA JONGO JABIRI ..... RESPONDENT**

**RULING**

*23<sup>rd</sup> August, 2023 & 5<sup>th</sup> October 2023*

**L. HEMED, J.**

Before the District Land and Housing Tribunal for Ilala, the Respondent herein, **RAPHAEL LEFI DAVID** who was suing under the power of Attorney of **ISIHAKA JONGO JABIRI**, *vide* Misc. Application No.155/2022 successfully applied for extension of time to file an Application to set aside *exparte* judgment in Land Application No.353 of 2019 which was delivered on 8<sup>th</sup> June 2020. The Chairperson who determined the application, Hon. M. Mgulambwa, ordered the respondent

to file the intended application within 14 days from the date of the impugned ruling.

Dissatisfied by the said ruling, the applicants herein **Fredrick Winston Kitwika** and **Godfrey Arthur Urasa** applied for Revision of the same to this court through Misc. Land Revision No.14 of 2023. The said application, which was placed before my sister at the bench Hon. A. Msafiri, J, could not sail smoothly as it ended up being struck out with costs on the ground of incompetence for having preferred under a wrong law.

The applicants could not get tired, they proceeded to lodge the instant application, now, seeking for extension of time to file an application for revision of the ruling and order of the District Land and Housing Tribunal in Misc. Application No.155 of 2022. The said application which has been supported by the joint Affidavit of applicants, has been challenged by the respondent vide the counter affidavit of **Raphael Lefi David**.

Parties appeared in person on 23<sup>rd</sup> August, 2023. On the said date it was directed for the application to be argued by way of written

Submissions. Submission in chief was to be filed by 14<sup>th</sup> September, 2023; Reply submission ought to have been lodged by 21<sup>st</sup> September, 2023; Rejoinder submissions was to be presented for filing on or before 28<sup>th</sup> September, 2023. On the said date the court ordered that Ruling would be delivered on 5<sup>th</sup> October, 2023.

Surprisingly, by 5<sup>th</sup> October, 2023 when the file was placed before me, there was no submissions. Efforts to find out if parties had filed any, proved failure and therefore, I proceeded to conclude that no submissions had been filed as per the order of this court made on 23<sup>rd</sup> August, 2023. This in fact, brings in an aspect of non-observance of the court orders. The question is who to be blamed in this matter?

On 23<sup>rd</sup> August, 2023, scheduling order was made apportioning duties to parties and the court itself in respect to the disposal of the matter at hand. The Applicants were given duty to file written submissions by 14<sup>th</sup> September 2023; while the respondent's duty was to file reply submission on or before 21<sup>st</sup> September 2023. The applicants also ought to have executed their responsibility to file rejoinder submission on or before 28<sup>th</sup> September 2023. The court's assigned duty was to compose ruling and deliver it on 5<sup>th</sup> October 2023.

The discharge of duties of the respondent and of the court depended much on the fulfillment of the applicants' responsibility to file submissions in chief. Failure of the applicants to file their submissions in chief led to the respondent's failure to file reply submissions. To answer the question as to who is to be blamed, I am of the firm view that, it is the applicants who share the blame. What is the consequences of non-filing of submissions?

It is a trite law and courts have been holding that by neglect or failure to file written submissions, by a party who lodged the matter, such party desires the consequences of not prosecuting the case. In **Godfrey Kimbe vs Peter Ngonyani**, Civil Appeal No. 41 of 2014, the Court of Appeal of Tanzania had this to say:-

*"In the circumstances, we are constrained to decide the preliminary objection without the advantage of the arguments of the applicant. We are taking this course because failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case."*

The consequences of failure to file written submissions is also found in **National Insurance Corporation of (T) Ltd & Another vs Shengena Limited**, Civil Application No. 20 of 2007 (CAT) and in **Patson Matonya vs The Registrar Industrial Court of Tanzania & Another**, Civil Application No. 90 of 2011(CAT).

In the circumstance of this case, apart from failure to file submissions to prosecute the application, the applicants have failed to heed to the order of this court made on 23<sup>rd</sup> August 2023. A court order must be obeyed unless set aside. Courts must be jealousy of their orders because once they are disobeyed without consequence, enforcement of future orders is compromised. Consequences for any disobedience must take course to ensure that courts are respected as final arbiters.

From the foregoing, having found that the applicants have failed to file their written submissions in contravention of the orders of this court dated 23<sup>rd</sup> August, 2023, this court finds that the applicants have failed to prosecute the instantaneous application. In consequence, thereof, I dismiss the entire application with costs. It is so ordered.

**DATED** at **DAR ES SALAAM** this 5<sup>th</sup> October, 2023.



*L. Hemed*

L. HEMED

**JUDGE**