

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

AT DAR ES SALAAM

LAND APPEAL NO.382 OF 2023

**(Arising from the decision of the District Land and Housing
Tribunal for Kibaha in Land Application No.86 of 2018 delivered
on 31st July,2023)**

AHMAD ALLY NG'OMBE.....APPELLANT

VERSUS

JANUARIUS SEBASTIAN MAGANGA..... RESPONDENT

RULING

12th December, 2023 & 19th March,2024

L.HEMED, J.

At the District Land and Housing Tribunal for Kibaha (DLHT), the Appellant herein **AHMAD ALLY NG'OMBE** sued the Respondent herein, **JANUARIUS SEBASTIAN MAGANGA** claiming ownership of the suit land located at KILUVYA "B", KILUVYA WARD, KISARAWA DISTRICT, and COAST REGION. The Appellant claimed to have acquired the suit landed property on 19th January 2005 after having been given the same by one HENRICA JOSEPH BAGAILLE as compensation for having taken care of the same suit



land for thirteen (13) years. He also alleged that the Respondent trespassed to it on 23rd July 2011 by establishing graveyard and planting trees therein.

After scrutiny of evidence adduced before it, the trial Tribunal delivered judgment on 16th December 2022 (H.E.MWIHAVA-Chairman) and dismissed the claims of the Appellant. The DLHT also found the Respondent herein the lawful owner of the suit land and that the Appellant was the trespasser into it. The Appellant was aggrieved by the said decision, he appealed to this Court *vide* LAND APPEAL NO. 13 OF 2023, where this Court, A.Z.Mgeyekwa,J (as she then was), through its judgment delivered on 3rd March 2023, quashed the judgment, decree and proceedings of the trial Tribunal starting from 13th December,2023. The court also remitted the file to the trial Tribunal to visit the *locus in quo* to ascertain the 'measurement' of the suit land and compose a new judgment.

The trial Tribunal complied with the directives of this Court and after having visited the *locus in quo*, it composed another Judgment and delivered it on 31st July 2023. The trial DLHT also found the Appellant trespasser into the suit land. It ordered him to demolish his house erected therein and vacate from it. He was also condemned to pay costs. He was aggrieved by the said decision hence the instantaneous appeal on the following grounds:-



"1. That, the Tribunal erred in law by entertaining the matter which was entertained Before by the same chairman and deliver the judgment on 16th day of Dec,2022, the result of which it reached to an erroneous decision.

2. That, the tribunal erred in law by not considering documentary evidence tendered by the appellant during hearing.

3. That, the tribunal erred in law by delivering a bias decision in favour of the Respondent who was not Administrator of the estate of the late Henrica Joseph Bagalile who was the original owner of Disputed Land.

4. That,the tribunal erred in law by disregarding the truth that, the appellant got the disputed piece of land by as reward from the late Henrica Joseph Bagalile after keeping and clearing the bush and planting several crops for more than fourteen years.

5. The tribunal erred in law by refusing calling key witness as highlighted by the appellant during hearing."

It should be noted that, previously, the matter was handled by my brother at the bench Hon. K. Mhina,J. Following his transfer to another



working station, it was re-assigned to me. On 12th December 2023, it was the day fixed for hearing and parties appeared in person. As parties were unrepresented, it was directed that the matter be argued by way of written submissions. The filing schedule was as follows:-

- Submissions in chief by 4th January, 2024;
- Reply submissions on or before 18th January 2024; and
- Rejoinder submissions if any, by 25th January 2024.

When the case file was placed before me to compose judgment, I could not find the reply submissions. I only found the Submissions in chief which was lodged by the Appellant. However, while venturing over it, I realized that the same was filed in this Court on 1st February 2024 contrary to the filing schedule. Following such discrepancy, I opted to avail the parties with an opportunity to address the Court on the anomaly.

The parties appeared before the Court on 19th March 2024 to address. When the Appellant was called to address the Court, he admitted to have filed his submission in chief on 1st February, 2024 instead of 4th January, 2024. He informed the Court of having filed it without leave of this Court.



On his part, the Respondent told the Court that he was unable to file Reply submissions because he was served on 2nd February 2024 out of time. He urged the Court to dismiss the entire appeal for want of prosecution.

Having heard from the parties, it is now clear that the Appellant filed his submission in chief out of time without the leave of this Court. The question is what is the consequences of filing submission out of time without seeking for leave? It is now settled that submissions that are filed out of time without leave of the court cannot be acted upon. This was held in the case of **Andrea Njumba v. Trezia Mwigobene**, PC Civil Appeal No. 1 of 2006, where the Court had this to observe:-

*"If a party fails to act within the time prescribed he will be guilty of diligence in like measures as if he has defaulted to appear and **submissions which were filed out of time will not be acted upon.**"*

(Emphasis added)

The above position has the meaning that, filing submissions out of the prescribed time without the leave of the Court is as good as having failed to file it and failure to file submissions has the effect of non-appearance or



failure to prosecute the matter. This position was taken by this Court (Makanja,J) in **Harold Maleko v. Harry Mwasanjala**,DC Civil Appeal No.16 of 2000, where the presiding Judge had this to say:-

"I hold, therefore, that the failure to file written submissions inside the time prescribed by the court order was inexcusable and amounted to failure to prosecute the appeal." (Emphasis added)

The above position was emphatically stated by the Court of Appeal of Tanzania in **Monica D/O Dickson v.Hussein J.(kny Chama cha Wafanyabiashara)**, PC Civil Appeal No.04 of 2019, that:-

"...it is settled principle that failure to file written submissions as ordered by the court is a manifestation of failure to prosecute the case. 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 be overemphasized." (Emphasis added)



Furthermore, in **P3525 LT Idahya Maganga Gregory v. The Judge Advocate General**, Court Martial Criminal Appeal No. 2 of 2002, it was re-insisted thus;

"It is now settled in our jurisprudence that the practice of filing written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. Courts decision on the subject matter is bound...Similarly, courts have not been soft with the litigants who fail to comply with the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records and are to be disregarded."

Guided by the above authorities, I find apt to conclude that Appellant's failure to file his submission in chief on or before 4th January, 2024 as ordered



by the Court, and his option to file the same on 1st February 2024 without the leave, amounts to non-filing. As pointed out earlier, failure to file submissions is as good as failure to prosecute. In the upshot, I proceed to dismiss the entire appeal with costs for want of prosecution. It is so ordered.

DATED at **DAR ES SALAAM** this 19th March 2024.




L. HEMED
JUDGE