

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**REVISION NO. 12 OF 2020**

**BETWEEN**

**MUSSA PONELA ..... APPLICANT**

**VERSUS**

**ALLIANCE ONE TOBACCO TANZANIA LTD ..... RESPONDENT**

**JUDGEMENT**

**S. M. MAGHIMBI, J:**

The applicant filed the present application challenging the decision of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/DSM/MOR/161/2016 dated 03<sup>rd</sup> December, 2019 by Hon. Kuyangwa, H. Arbitrator. On the 12/08/2021, this court ordered the disposal of the application by written submissions. The scheduling orders for filing the written submissions was as follows: the applicant was to file his submission by 02/09/2021, reply submission by the respondent by 17/09/2021 and rejoinder if any was to be filed by 24/09/2021.

Unfortunately, the applicant and his Advocate Mr. Imam Hassan Daffa did not adhere to the Court's order. As the record shows, Mr. Daffa filed the applicant's written submission on 14/09/2021 which was also accompanied by a letter notifying the court that he has failed to

comply with the Court's order hence, prayed for his submission to be admitted on the filed date.

On the other hand, Mr. Boniphace Woiso for the respondent faulted the Mr. Daffa's prayer to file the applicant's submission out of time through a letter. He stated that the applicant's submission was filed out of time without authorisation of the court. He therefore urged the court to disregard the applicant's submission and dismiss the application for want of prosecution. To support his submission, he cited the case of **Abisai Damson Kidumba v. Anna Chamungu & three others, Misc. Land. Application. No. 43/2020 High Court Mbeya.**

I have considered the delay in filing submission as a serious omission. It has been decided in numerous court's decisions that failure to file written submission as scheduled by the court is as good as non-appearance when the matter was fixed for hearing by the Court. This is the position of the Court of Appeal of Tanzania in the case of **Godfrey Kimbe v. Peter Ngonyani, Civil Appeal No. 41 of 2014** at page 3 where it was held that:

*'We are taking this course because failure to lodge written submission after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case.'*

The same position was underscored in the case of **Abisai Damson Kidumba v. Anna N. Chamungu and 3 Others, Miscellaneous Land Application No. 43 of 2020** District Registry of Mbeya at Mbeya (unreported), in which the Court observed:

*'...The law is settled to the effect that a case shall face dismissal for want of prosecution if a party fails to file his written submission on the date fixed by the Court... Consequently, under the circumstances, I dismiss the applicant's application with costs for want of prosecution.'*

The effect of noncomplying with the Court's order of filing written submissions was also stated in the case of **Abisai Damson Kidumba** (supra) and the case of **NIC of Tanzania and Consolidated Holding Corporation v. Shengana Ltd, Civil Application No. 20 of 2007** (unreported), the Court of Appeal of Tanzania at Dar es Salaam, whereby it was held that the matter ought to be dismissed.

Since the 1<sup>st</sup> applicant did not file submissions on due date as ordered, it is as good as he did not appear in court when the matter was scheduled for hearing. Though the applicant alleges that he accompanied his delay with a letter, such an action cannot be blessed by this court. Any party to a case who has not complied with the court's order/schedule has to seek for extension of time first before proceeding

to prosecute such case. In this application the applicant was supposed to seek for leave of the court to file submissions out of the scheduled time first before filing his submissions out of time. On the basis of the foregoing the applicant failed to prosecute the matter since he failed to file his submissions as ordered by the court. As a result and in line with the cited cases above, this matter deserves to be dismissed for want of prosecution which I hereby proceed to so do. The application is dismissed for want of prosecution.

Dated at Dar es Salaam this 08<sup>th</sup> December, 2021.



  
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**S.M. MAGHIMBI**  
**JUDGE**