

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[MOROGORO SUB-REGISTRY]

AT MOROGORO

CIVIL APPEAL NO. 27072 OF 2023

(Arising from the Judgement of the District Court of Morogoro in Civil Case No. 30/2022)

ZAMZAM TWALIB ULOMI.....APPELLANT

VERSUS

CHRISTOPHER MATHEW PONELA.....RESPONDENT

JUDGMENT

08/04/2024 & 06/05/2024

KINYAKA, J.:

The appellant preferred the present appeal against the respondent seeking to challenge the decision of the District Court of Morogoro in Civil Case No. 30 of 2020 which ordered her to give vacant possession of their matrimonial house located at plot No. 41 Block "F" Tungi Area in Morogoro through the following grounds of Appeal:-

1. That, the trial District Court erred in law and fact for failure to note and hold that the parties lived together under presumption of marriage;

to

2. That, the trial District Court erred in law and fact for failure to hold that the Appellant contributed towards construction of a House located on Plot No. 41; Block "F"; Tungi; Morogoro Municipality, hence the Appellant is entitled for her shares of the said House; and
3. That, the trial District Court erred in law and fact for failure to analyze and evaluate the evidence properly.

On 8th April 2024, when the appeal was called on for hearing, the Court ordered the appeal to be disposed of by way of written submissions. The Court ordered the appellant to file her submissions in chief on or before 15/04/2024 whereas the respondent's reply submissions and appellant's rejoinder were supposed to be filed on or before 22/04/2024 and 29/04/2024, respectively. However, by the time of composing this judgment, the appellant had not filed her submissions. On the other hand, the respondent filed his submissions wherein he complained about the appellant's inaction to file her submission in chief.

In his submissions, he reminded the Court of a cardinal principle of law that failure to file submission on scheduled date is tantamount to failure to prosecute a case as enunciated in the cases of **Famari Investment (T) Ltd Vs Abdallah Selemani Komba, Misc. Civil Application No.41 of**

2018, Harlod Madeka vs Harry Mwasanjala, DC Civil Appeal No 16 of 2000, Geoffrey Chawe vs Nathaniel K. Chawe, Misc. Civil Appeal No.22 of 1998 and underlined that since the appellant did not file her written submissions as ordered by this Honourable Court on 8th April 2024, she then failed to prosecute the appeal. In light of the cited precedents, the respondent implored the Court to dismiss the appeal with costs.

I have examined the records of this appeal in line with the respondent's submissions as regards to the appellant's omission to file her written submissions as ordered by the Court. Admittedly, neither in the electronic Case Management System nor in the physical file, did I find the appellant's submissions in support of her appeal. As rightly submitted by the respondent, it is now settled that such an omission is tantamount to the appellant's nonappearance on the date set for the hearing of the appeal as spelt out by the Court of Appeal in the case of **Godfrey Kimbe v. Peter Ngonyani, Civil Appeal No. 41 of 2014** on page 3 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"



In **Monica Dickson v. Hussein J. Wasuha, PC Civil Appeal No. 4 of 2019**, this Court made the following observations:-

"First and foremost, it is a settled legal principle that the failure to file written submission 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. The applicant and his advocate failed to submit written submission on the date fixed, something which is tantamount to non-appearance on the date of hearing....."

On page 3 of the decision, the Court went on by citing with approval the holding in the case of **Geoffrey Chawe v. Nathaniel K. Chawe, Misc. Civil Application No. 22 of 1998** where it was categorically held:-

"...failure to file written arguments on the part of the learned counsel for the applicant is an omission which constitutes want of prosecution. I would dismiss the application on that account."

Applying the positions in the persuasive authorities above to the matter under consideration, I hasten to hold that the appellant has failed to

prosecute her appeal for her failure to file the written submissions in support of the appeal as directed by the Court.

As a way forward, I dismiss the appeal as I would have in case the appellant would have failed to physically appear on the date set for hearing without notice to the Court. Due to the nature of the parties' dispute, I order that each party bear its own costs.

It is so ordered.

Right of appeal to the Court of Appeal fully explained.

DATED at **MOROGORO** this 6th day of May 2024.

H. A. Kinyaka

H. A. KINYAKA

JUDGE

06/05/2024

