

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM MAIN REGISTRY

AT DAR ES SALAAM

PC.CIVIL APPEAL NO 104 OF 2008

(Appeal Originating from the Trial District Court of Ilala at Samora Avenue Civil Case No. 60 of 2007 from Primary Court of Ukonga Case No. 73 of 2007)

ELLY OKECHI KISSI.....APPELANT

VERSUS

CELINA THOMAS LIGOYE.....RESPONDENT

Date of last Order-19 /7/2010

Date of Judgment- 22/10/2010

JUDGMENT

Aboud, J.

This is an appeal against the judgment of the learned Resident Magistrate of Samora District Court in a Civil Case No. 60 of 2007.

The memorandum of appeal contains three grounds of appeal as follow;

1. That the trial Magistrate erred in law and fact by upholding the decision of the Primary Court while the Marriage between the parties is broken down irreparably.
2. The Magistrate erred in law and in fact by advising the appellant to compromise with the respondent so that she can return and live together.
3. The trial Magistrate erred in law and in fact by disregarding the grounds of appeal raised by the appellant.

When the matter came for hearing on 19th of July 2010 the Court ordered parties to argue the appeal by way of written submissions as in the following schedule;

- The Appellant to file written submission by 20/8/2010
- Respondent to file written submission by 20/9/2010
- Rejoinder if any by 30/9/2010
- Judgment on 22/10/2010.

Both parties did not file their submissions as ordered by the court. The appellant filed a letter on 1/9/2010 praying for this Court to extend two weeks to file his written submission on ground that his

Advocate has traveled, but two weeks had lapsed since 15/9/2010 and the appellant has not filed the submission.

The well established principle is that written submissions are made in lieu of oral submissions by parties in civil suits or appeals when arguing for or against, it is therefore prudent that the same are synonymous to normal hearings conducted in court. Order XXXIX Rule 17 (1) of the Civil Procedure Code (Cap 33 R.E. 2002) provides consequences for non-appearance, that;

"Where on the day fixed or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called for hearing, the court may make an order that the appeal be dismissed".

Therefore failure to file submission to support the application is to the same effect as the appellant failing to prosecute his case as provided under Order XXXIX Rule 17 (1) of the Civil Procedure Code. This is the position of this court as held by Hon. Kalegeya, J (as he then was) in the case of ***MS. OLYMPIA KOWERO VS. EDITOR OF***

EXPRESS AND 3 OTHERS, Civil Case No. 176 of 2005, Dar es salaam (unreported) that;

"where a party fails to file written submission in compliance with a scheduled order, the consequences similar to those of failure to appear and prosecute or defend, as the case may be, come in to play".

Also in ***LOTA SATUWAKI AND LEARNED REED V. CHARLS MAJUNGE AND EINCHARD EDWARD, Civil Appeal No. 64 of 2006, Dar es Salaam (unreported)*** the court found that submission which was not filed on the date as ordered by the court as no submission in the eye of the law or the appeal is not argued by the appellant before the court. Therefore the Court dismissed the appeal for want of prosecution.

In the circumstances I can not hesitate to say that the appellant has failed to comply with the order of this court that he should file his written submission on 20th of August 2010 and he did not provide any reason whatsoever for his failure to file the same,

the consequences of which are the same as the applicant has failed to appear and prosecute his case.

In the result, the appeal is hereby dismissed for want of prosecution.

It is so ordered.




I.D.ABOUD

JUDGE

22/10/2010

Extracted this.....28th.....day of.....October.....2010



JUDGE