

**IN THE HIGH COURT OF TANZANIA**

**AT ARUSHA**

**CRIMINAL APPEAL NO 105 OF 2014**

*(C/F Criminal Case NO 48 OF 2012 in the District Court of Monduli at Monduli)*

**FESTO ROGASIAN SWAI.....APPLICANT**

*Versus*

**REPUBLIC.....RESPONDENT**

**JUDGMENT ON APPEAL**

**S.M MAGHIMBI, J**

At the District court of Monduli at Monduli, the appellant was charged with two counts to wit:(1) Embezzlement and misappropriation contrary to section 28 (1) of the prevention and Combating of Corruption Act No 11 of 2007 and (2) Abuse of position contrary to section 31 of the Prevention and Combating of Corruption Act No 11 of 2007, The appellant was convicted for the first count and he was sentenced to pay fine of Tshs.500,000/= in default to imprisonment for one year.

The appellant being aggrieved by the trial court's decision, he has appealed to this court. He has advanced four grounds of appeal as hereunder reproduced;

1. That, the trial court erred in holding that the accused had acted dishonestly or fraudulently.
2. That, the trial court erred in holding that the accused had embezzled the sum of Tshs. 5,796,000/= contrary to the testimony of PW3.

3. That, the trial court erred in holding that there was proof of any banking during the accused's absence as RITA officer at Monduli.
4. That, the trial court erred in holding that the 1<sup>st</sup> count was proved beyond reasonable doubt.

In this appeal the appellant is represented by Mr. Kinabo learned counsel, while Mr. Felix Kwetukia learned State Attorney represented the respondent/Republic.

On 31<sup>st</sup>, July, 2015 when the appeal was scheduled for hearing, Ms. Mtayangulwa appeared for the appellant (holding brief for Mr. Kinabo) and this court ordered the hearing of this appeal to proceed by way of written submissions whereby the Appellant was ordered to file his submissions in chief by 14/08/2015, the respondent to file his reply by 28/08/2015 and rejoinder if any to be filed by 04/09/2015.

Up to the date of this Judgment, the Appellant through his counsel Mr. Kinabo has failed to file his submissions in chief in compliance with the scheduled order. It is titrate law that where a party fails to file written submissions in compliance with a scheduled order, the consequences are similar to those of failure to appear and prosecute his case.

In the circumstances, , this court finds that appellant's failure to file written submissions in compliance with the scheduled order amounts to appellant's failure to prosecute his appeal. Consequently the same is dismissed for want of prosecution.

***Appeal Dismissed***

Dated at Arusha this 16<sup>th</sup> day of October, 2015

**SGD  
S. M. MAGHIMBI  
JUDGE**

I hereby certify this to be a true copy of the original.



*[Signature]*  
**Deputy Registrar**  
**High Court**  
**Arusha**  
*29/10/15*