

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA

MISC.LAND APPLICATION NO.30 OF 2019

(Arising from the judgment of land appeal No. 25 of 2018 in the High Court of Tanzania at Mtwara)

SHABANI AMURI SUDI *(the administrator of the estate of the late Amuri Sudi)*.....**APPELLANT**

VERSUS

KAZUMARI HAMISI MPALA.....**RESPONDENT**

RULING

Final court order on: 10/9/2020

Ruling date on: 10/11/2020

NGWEMBE, J:

The appellant Shabani Amuri Sudi appearing as an administrator of the deceased estate of the late Amuri Sudi, filed Land Appeal No. 25 of 2018 before this Court. Upon considering the appeal, the court entered judgment in favour of the respondent. The appellant was aggrieved with that judgement and decree, thus came up with an application for leave or extension of time to file notice of appeal to the Court of Appeal of Tanzania. Before the application is heard, the respondent raised an

objection to the effect that *that the application is bad in law and shall pray the same be dismissed with costs.*

The legal procedure requires that, once a preliminary objection in an application or suit is raised, must first be determined prior to hearing of the application on merits. On hearing of the preliminary objection, the applicant was not represented by legal counsel, while the respondent was represented by Mr. Ali Kasiani Mkali learned advocate.

Parties were granted leave to dispose of the preliminary objection by way of written submissions. The court scheduled the dates for filing their written submissions to the effect that the respondent/objector to file his submission on 18/9/2020; the applicant to file his submission on 25/9/2020; and rejoinder, if any, from the objector (respondent) on 30/9/2020. In his written submission the respondent submitted that, the applicant wrongly cited the enabling provisions of the law to move the court to grant prayers made in the Chamber Summons.

He emphasized that, the applicant has cited wrongly and irrelevant section 10 of the Appellate Jurisdiction Act, Cap 141 R.E 2002 and Rule 45 of The Court of Appeal Rules. Further, argued that none of the above cited provisions supports the prayers in the chamber summons, thus the application lacks enabling provisions of law. To bolster his point, the applicant referred this court to the case of **Edward Bachwara & three Others Vs. The Attorney General & Another, Civil Appeal No. 128 of 2006.**

Above all, he argued that, the chamber summons comprises omnibus prayers. The applicant failed to specify as to which prayer is seeking on this court, whether is seeking leave to appeal to the Court of Appeal or extension of time or both leave and extension of time. To amplify his argument, the learned advocate referred this court to the case of **Hajiri Haji Makololo Vs. Zena Swai, Misc. Land case No. 4 of 2018**, where in determining that case, the court cited the case of **Mohamed Salmin Vs. Jumanne Ommary Mpasa, Civil Application No.13 of 2014**. He insisted that, although extension of time is court's discretion, but such discretion always is exercised judiciously.

Moreover, he submitted that, in the applicant's affidavit, there is no sufficient reason for the delay. As such he referred to the case of **Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women Christian of Tanzania, Civil Application No.2 of 2010** (unreported) as cited in the case of **The Bishop Roman Cathoric Diocese of Tanga Vs. Casmir Richard Shemki, Civil Appeal No. 507 of 2017**(CAT).

In conclusion, the learned advocate prayed this application be struck out with costs.



In turn, the applicant did not file his written submission against the preliminary objection as was ordered by this court. Thus, rendering this court to consider the objection on one side.

Of course, the law is settled on this issue that, failure to file written submission as ordered by the court is a manifestation of failure to appear and argue his application/case. Failure to file written submission on the dates scheduled by the court without any justifiable reason is as good as non-appearance on the hearing date. In this application, the applicant was present on 10th September, 2020 when this court granted leave to the parties to address the court by way of written arguments. Above all, this court did provide schedules of filing their written submissions. Therefore, the applicant either refused to heed to the court's schedule or had nothing to reply to the respondent's preliminary objection. In the case of **Haleko Vs. Harry Mwasaijala, DC Civil Appeal No.16 of 2000**, (unreported), the court held:-

"I hold, therefore that the failure to file written submission inside the time prescribed by the court order was inexcusable and amount to failure to prosecute the appeal. Accordingly, the appeal is dismissed with costs."

Similar position was emphasized in the case of **Olam Tanzania Limited Vs. Halawa Kwilabya, DC. Civil Appeal No.17 of 1999** where it was held:-

"Now what is the effect of a court order that carrier instructions which are to be carried out within a pre-determined period? Obviously such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a half or it will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submission is part of hearing. So if



a party fails to act within the prescribed time, he will be guilty of in-diligence in like measure as if he defaulted to appear..... This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."

I fully subscribe to this guidance that indeed in any civilized society, there must be respect to law and order. Court orders must be respected, obeyed and complied with religiously. Likewise, court proceedings are controlled by the presiding judge or magistrate, parties cannot decide to do contrary to the court's order. Tolerating them will amount to voluntary invitation to judicial chaos, disrespect and injustice. I am not ready to that invitation, rather I will stand firm to defend judicial respect and build social confidence to the judiciary. In fact, failure to file written submission on the dates scheduled by the court is as good as non-appearance on the date fixed for hearing. In **P 3525 LT Idahya Maganga Gregory Vs. The Judge Advocate General, Court Martial Criminal Appeal No. 2 of 2002** (unreported) the court held:-

"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 consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be"



In this application, the objection is not opposed by the applicant. This court expected clarification from the applicant on what he meant when he applied for leave or extension of time as appears in prayer one to three in

the chamber summons. Above all, the court expected clarification on the applicable laws for either prayer for leave to appeal to the court of Appeal or extension of time. In the absence of the applicant's written submission, I find no reason to depart from the respondent's objection and well written arguments in support.

I therefore, proceed to grant the objection and strike out the entire application with costs.

I accordingly order.

Dated at Mtwara in chambers this 10th day of November, 2020.



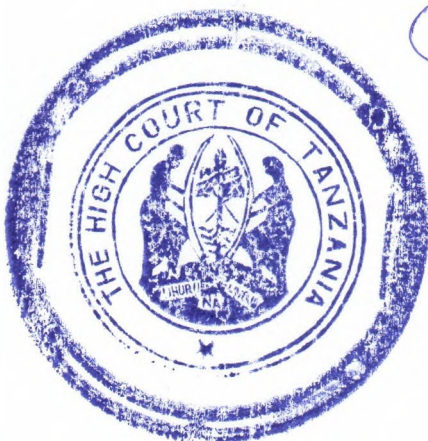
P.J. NGWEMBE

JUDGE

10/11/2020

Court: Ruling delivered at Mtwara in Chambers on this 10th day of November, 2020 in the presence of the applicant and Ruta Bilakwata for Ally Kasian Mkali, Advocate for the Respondent.

Right to appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

10/11/2020