

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

MWANZA

MISCELLANEOUS LAND CASE APPEAL NO. 19 OF 2007

**(From the Decision of the District Land and Housing Tribunal of Mwanza
District at Mwanza in Land Case Appeal No. 50 of 2009 and Original Ward
Tribunal of Nduruma Ward in Application No. 4 of 2009)**

MWEBESHA LUHUTA APPELLANT

VERSUS

BAKOKO NAMALA RESPONDENTS

RULING

MWAMBELE, J:

When this appeal was called on for hearing on 27.02.2008, the Respondent did not appear. Consequently, the Appellant snatched the golden opportunity and prayed to proceed *ex parte*. The court granted Appellant's prayer. On that very date, the Appellant made yet another prayer; he prayed to argue the

appeal by way of written submissions which prayer was also granted. For reasons that are not clear to me, the appellant has not filed the written submissions to date. This is the fifth time the appeal is fixed for mention and the appellant has never appeared.

The record before me speaks loudly and clearly that the Appellant has not filed the submissions as ordered by the court on 27.02.2008; more than four years and seven months ago. I take it that the appellant is no longer interested to prosecute this appeal. There is a line of authorities in this jurisdiction that establish that failure to file written submissions is tantamount to failure to prosecute or defend the case [See ***Maria Rugarabamu Vs National Housing Corporation and Another***, Civil Appeal No. 32 of 1996 (HC) (unreported)].

Courts have all along been insistent that court orders must be respected and complied with so that justice is administered in a smooth manner. One such case is ***Perpetua H. Kirigini & another Vs Dr Msemo Diwani Bakari*** HC, Land Appeal No. 3 of 2005 HC(unreported) in which Lugazia, J held:

*“... up to the writing of this judgment the appellants
are yet to file their submissions. This is a very*

serious omission, which cannot be condoned. This court has had occasions to express its displeasure and made parties on default to suffer the consequences. The hard stand adopted by the court is due to the desire to protect its integrity for, it would be an exposure to public ridicule if its orders are disregarded with impunity without any reaction”.

And His Lordship went on:

*“It has been held by this court on very many occasions that the practice of filing submissions has been equated to non appearance or want of prosecution – see **Hidaya Zuberi vs Bongwe Mbwana** PC Civil Appeal No. 98 of 2003 DSM (unreported)”. (Emphasis not mine). [See also **Said Shekhan Vs Radhia Hassan** Land Appeal No. 2 of 2005 DSM (unreported) and cases cited therein]*

A more serious note was echoed by this court in ***Athumani Kungubaya & Another Vs PSRC & TTCL***, Miscellaneous Civil Appeal No. 1 of 2001 HC (unreported) in which Luanda, J (as he then was) held:

“... court orders should be complied with for the betterment of administration of justice. To allow a party to do things contrary to court orders not only shows disrespect to the courts but also creates chaos to the entire process of administration of justice. That thing should not be allowed to occur”.

[see also: ***Buyamba John Vs Adili Bankcorp***, Civil Case No 146 of 2000 HC (unreported)].

Speaking of the importance of litigants to follow up their cases, in ***Tanganyika Motors Ltd Vs bahadurali Ebrahim Shamji***, Civil Application No. 65 of 2001 (unreported), Ramadhani JA (as he then was) had this to say:

“A serious appellant would follow up his application and would not stay put. Otherwise unscrupulous

A more serious note was echoed by this court in ***Athumani Kungubaya & Another Vs PSRC & TTCL***, Miscellaneous Civil Appeal No. 1 of 2001 HC (unreported) in which Luanda, J (as he then was) held:

“... court orders should be complied with for the betterment of administration of justice. To allow a party to do things contrary to court orders not only shows disrespect to the courts but also creates chaos to the entire process of administration of justice. That thing should not be allowed to occur”.

[see also: ***Buyamba John Vs Adili Bankcorp***, Civil Case No 146 of 2000 HC (unreported)].

Speaking of the importance of litigants to follow up their cases, in ***Tanganyika Motors Ltd Vs bahadurali Ebrahim Shamji***, Civil Application No. 65 of 2001 (unreported), Ramadhani JA (as he then was) had this to say:

“A serious appellant would follow up his application and would not stay put. Otherwise unscrupulous

*parties would use the appellate process as a ruse for
employing delaying tactics and deny successful
parties the enjoyment of their awards”*

I share the same sentiments with His Lordship in the above quotation. In the instant case, the Appellant was ordered to file his written submissions by 21.03.2008. He has not complied with this order to date. One can reasonably argue that the Appellant lost interest in this appeal long time ago. If the opposite were true; in the light of the **Tanganyika Motors** case (supra), it was expected he would be following up his appeal. It seems to me that this appeal has been occupying space in our registry shelves for no justified cause at all.

For failure to present written submission for more than 55 months, as already alluded to hereinabove, the Appellant might have lost interest in his appeal. Consequently, the appeal must be, and it is hereby dismissed for want of prosecution. It is dismissed with costs.

DATED at MWANZA this 15th day of October, 2012.


J. C. M. MWAMBELE

JUDGE