

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

MISC. CIVIL APPLICATION NO. 53 OF 2020

*(C/f the High Court of the United Republic of Tanzania at Arusha, Civil Appeal No. 14 of 2019,
Originating from the District Court of Babati, Matrimonial Cause No. 1 of 2017)*

CHRISTOPHER ANTON APPLICANT

Versus

TARSILA MICHAEL RESPONDENT

RULING

14th September & 22nd October, 2021.

MZUNA, J.:

The applicant herein, has preferred this application moving this Court to grant him leave to appeal to the Court of Appeal against the decision of this Court in Civil Appeal No. 14 of 2019, which was delivered on 07/05/2020. The application is supported by affidavit of the applicant. The respondent contested the application in a counter affidavit deponed by herself.

Brief facts leading of this case is as follows: The parties herein were husband and wife respectively. After long term enjoyment of the marriage, sometimes in 2017, it turned sour. The respondent petitioned for divorce in the District Court of Babati (the trial court), vide Matrimonial Cause No. 1 of 2017. Among others, she sought the following reliefs: First, a declaration that the marriage has been broken down irreparably, hence decree of divorce be issued;

Second, division of matrimonial assets jointly acquired during the subsistence of their marriage; Third, general damages as may be assessed by the court; Fourth, an order for past, present and future maintenance at the rate of Tshs 300,000/= per month; Fifth, costs of the suit; and lastly, any other relief(s) the court deemed fit to grant.

After hearing the parties and scrutinizing the evidence before it, the trial court made a finding that the marriage has been broken down irreparably, and granted the decree of divorce. It issued subsequent orders of division of matrimonial assets whereas the respondent was given a share of one third (1/3) of a house located at Negamsii (Plot No. 18, Block "V"), grinding machine and welding machine, Plot situated at Miomboni area, Motorcycle (T. 458 BDR), one television, a sofa set and one bed. The applicant was given two third (2/3) share of the house at Negamsii, a car make Mitsubishi with registration No. T 493 ADL, one television, one bed and a refrigerator. In the trial court's view, there was no proof that the other properties referred to were matrimonial properties, thus, distribution of the same was not made.

The respondent was aggrieved by the decision of the trial court, especially on the division of the matrimonial assets. She appealed to this Court vide Civil Appeal No. 14 of 2019. This Court, (Gwae, J.) reversed the decision of the trial court on the division of matrimonial assets, re-assessed the evidence and made its own finding by re-distributing them. That decision aggrieved the

applicant, prompting this application seeking for leave of this Court to appeal to the Court of Appeal.

Before me, the applicant was represented by Mr. Edmund Ngemera, learned advocate, while the respondent was represented by Mr. Joseph Masanja, learned advocate also. On 10/8/2021, the counsel for the applicant prayed that the appeal be argued through filing written submissions. The prayer was granted by this Court, and filing schedule was made in the following order. Written submission by the applicant was to be filed by 24/8/2020, reply submission by the respondent was to be filed by 7/9/2021, and rejoinder, if any, was to be filed by 14/9/2021.

As the record stands, the applicant did not file the written submission on the due date. On 14/9/2021, when the application came up for mention, when probed, the applicant's counsel simply said that he failed to file the submission as ordered because he had many submissions.

On her part, the respondent said:-

"I came on the fixed date but found nothing. I came all the way from Babati. They are wasting my time." (Underscoring mine).

The question to ask is, can a court of law condone late filing of submissions where a party has asked for filing same and granted 14 days but then stay idle?

It is trite law that, failure to file written submissions as ordered by the Court, is tantamount to failure to prosecute one's case. In this respect I am guided by the Court of Appeal decision in **National Insurance Corporation of (T) Ltd & Another Vs. Shengena Limited**, Civil Application No. 20 of 2007 (unreported) where it was observed that:

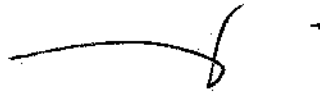
"The Applicant did not file submission on due date as ordered. Naturally, the court could not be made impotent by a party's inaction. It had to act. ... It is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."

In the application at hand, the applicant's counsel was given 14 days to file his written submission, but he opted not to. He came with cheap reasons that he had many submissions. The implication is that, he defied to court orders. Courts in a number of occasions, stand firm that court orders must be respected and complied with. See **Tanzania Breweries Ltd Vs. Edson Dhobe and 19 Others**, Misc. Civil Application No. 96 of 2000 (unreported).

In applications of this nature under section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2002], whether to grant leave or not, the applicant must satisfy the Court that the grounds of appeal raise issues of general importance or a novel point of law or a prima facie or arguable appeal. The applicant had willingly failed to exercise that right of showing whether there are such arguable grounds. There is no way this court can step into his shoes. This, failure and defiance of court order has caused prejudice to the respondent.

That said, I desist from granting leave sought. Application stands dismissed with costs which shall be borne by the advocate in person.

Order accordingly.



M. G. MZUNA,

JUDGE.

22nd October, 2021