

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO. 17 OF 2021

(Originating from the District Land and Housing Tribunal for Mtwara at Mtwara in

Miscellaneous Land Application No. 159 of 2020)

SOMOE ATHUMANI MTAPALUNDA.....APPELLANT

VERSUS

SELEMANI RASHIDI CHIOLOKA.....RESPONDENT

JUDGMENT

15th Oct. & 19th Nov., 2021

DYANSOBERA, J.:

The appellant, Somoe Athumani Mtapalunda, was sued by the respondent before Jangwani Ward Tribunal. On 22.03.2016 the trial Tribunal delivered its decision in favour of the respondent. Following that decision, the respondent filed Misc. Land Application No.115 of 2017 before the District Land and Housing Tribunal for Mtwara for execution of the decision of the Jangwani Ward Tribunal. Thereafter, the appellant filed Misc. Land Application No.159 of 2020 before the same District Land and Housing Tribunal in which the appellant sought the District Land and Housing Tribunal seeking for revision of the decision of

the Jangwani Ward Tribunal in Misc. Land Application No.115 of 2017. The application by the appellant encountered a preliminary objection from the respondent that was time barred. On 25.09.2020 the District Land and Housing Tribunal for Mtwara delivered its ruling on the raised preliminary objection in favour of the respondent. The District Land and Housing Tribunal dismissed with costs the application by the appellant under section 3(1) of the Law of Limitation Act [Cap. 89 R.E. 2019].

Following that dismissal order, the appellant decided to file this appeal in this court by way of memorandum of appeal containing one ground of appeal which is to the following effect: -

“That the trial chairman erred in law and fact for entertaining an objection which was prematurely brought before it.”

When this appeal was called for hearing on 15.10.2021 only the appellant appeared in person and unrepresented. The appellant prayed this case to be heard ex-parte. Consequently, his prayer was granted. She also prayed her appeal to be heard in writing. This court granted the prayer and ordered her to file the written submission by 22nd October, 2021.

To my surprise, until the time of composing this judgement the appellant has not filed her written submission. That is a noncompliance with the scheduled order of this court and which is tantamount to non-

appearance or failure to prosecute the case by the appellant. This position was well elaborated by the Court of Appeal in the case of **P3525 LT Idahya Maganga Gregory v. 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 attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. Court decision on the subject matter is bound...Similarly, courts have not been soft with litigants who fail to comply with the court orders, including failure to file written submissions within the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records are to be disregarded"

Besides, this court sitting at Dar es Salaam in the case of **Tanzania Breweries Ltd v. Edson Dhobe & 19 Others**, Misc. Civil Application No.96 of 2000 held that: -

"Court orders should be respected and complied with. Court should not condone failures. To do so is to set a bad precedent and invite chaos. This should not be allowed to occur. Always court should exercise firm control over proceedings."

In the light of the above precedents of this court and those of the Court of Appeal, the appellant was not only disrespectful of the court's order issued on 15.10.2021 requiring her to file her written submission by 22nd October, 2021 but also her conduct has amounted to non-appearance and non-prosecution of her case. This court is duty bound to control and manage cases.

For the foregoing reasons, I dismiss this appeal for non-appearance and failure to prosecute the case with no order as to costs.

Order accordingly.




W.P. Dyansobera

Judge

19.11.2021

This judgment is delivered at Mtwara under my hand and the seal of this Court on this 19th day of November, 2021 in the presence of the appellant and in the absence of the respondent.




W.P. Dyansobera

Judge