

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**MISC CIVIL APPLICATION NO. 596 OF 2023**

**(Originating from Civil Appeal No 180 of 2019 of this Court  
dated 8/7/2022)**

**OLIVA AMULIKE..... APPLICANT**

**VERSUS**

**RITHA METHEW TEMU AND BENARD ABRAHAM TEMU**

**(As joint administrators of the estate of the late**

**ABRAHAM BENARD TEMU) ..... RESPONDENT**

**RULING**

*15<sup>th</sup> February & 17<sup>th</sup> March 2023*

**MKWIZU, J:**

The applicant in this matter was appearing as a respondent in civil appeal No. 180 of 2019 preferred by her opponent, the respondents in their capacity as joint administrators of the estate of the late Abraham Bernard Temu which overturned the decision by the District Court in matrimonial cause No 64 of 2009 awarding the applicant 20% shares of the deceased properties as the party of the distribution of matrimonial assets.

The applicant was aggrieved but delayed in processing the appeal to the Court of Appeal prompting the filing of this application with three prayers (i) *extension of time within which to file a Notice of intention to appeal to the Court of Appeal,*(ii) *the extension of time to lodge letters requesting for the certified copies of the records, proceedings, judgment, decree,*

*ruling, drawn orders for the preparation of the intended appeal and (iii) extension of time to allow her file an application for leave to appeal.*

The application is made by a chamber under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] (AJA) supported by the affidavit sworn by the applicant on 21<sup>st</sup> December 2022. The application was opposed by the respondent through their counter affidavit filed in court on 13<sup>th</sup> February 2023.

When the matter came before the court on 15<sup>th</sup> February 2023, the applicant who was in person informed the court that she has an advocate who is engaged for drawing the documents only and therefore she prayed for a hearing through writing submissions. The Respondent's counsel Mr. Libent Rwazo, had no objection to the prayer. The court granted the applicant's prayer and the applicant was ordered to file her written submission on 22/2/2023, reply to submissions by the respondent counsel on 1/3/2023, and rejoinder if any on 7/3/2023 and the application was scheduled for the ruling on 17/3/2023.

The applicant did not comply with the court order and for that matter she did not file her written submissions in support of the application. Instead, she filed in the court records a reply to the counter affidavit.

The respondent did respond to the situation, they presented to the court a detailed written submission urging the court to dismiss the application for failure by the applicant to file written submissions. He relied on the decision of **Godfrey Kimbe V Peter Ngonyani**, Civil Appeal No 21 of 2014( unreported) cited with approval two cases one of **National Insurance Corporation of (T) LTD and Another V Shengena limited**, Civil Application No. 20 of 2017 and **Patson Matonya V The**

**Registrar Industrial Court of Tanzania & Another**, Civil Application No 90 of 2011 ( both unreported). And the decision of **Kelvin Thobias Mvenile V the Republic**, Criminal Appeal No 32 of 3022(High Court) (Unreported).

Indisputably, it is a settled principle of the law that failure to file written submissions as ordered by the court is an indication of one failure to prosecute the matter. It is obvious from the records that the order for the filing of the written submissions was initiated by the applicant who wanted to have the matter heard through Witten submissions to enable her to use her lawyer who is engaged for drawing only. She has however failed to comply with the court order and no reasons whatsoever were adduced to clarify the situation.

Explaining the consequences of failure to file written submissions, the Court in **Godfrey Kimbe V Peter Ngonyani( supra) held:**

*"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. (Emphasis supplied)*

And in Olam **Tanzania Limited v. Halawa Kwilabya**, DC. Civil Appeal No. 17 of 1999 (unreported) this Court observed:

*"Now what is the effect of a court order that carries 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 halt or it will be so chaotic that everyone will decide to do only that which is convenient to them. In addition, an order for filing submission is part of hearing. So if a party fails to act within 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.” (Emphasis added)*

Since the applicant has failed to file the written submission in chief in support of her application, and there being no extension of time sought, the courts have no option but to dismiss the application, with costs.

**Dated at DAR ES SALAAM this 17<sup>th</sup> day of March 2023**



**E.Y Mkwizu  
JUDGE  
17/3/2023**