

TANZANIA / JUDGMENT

# final RULING ANASTAZIA PAUL tanzilii2

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI SUB - REGISTRY AT  
MOSHI CIVIL APPEAL NO. 17146 OF 2024 ANASTAZIA PAUL  
KIMARO.....APPELLANT VERSUS FLAVIAN  
MARANDU.....RESPONDENT

## RULING

6th Feb. 2025 & 17th March 2025. A.P. KILIMI, J.: The Appellant and the Respondent contracted a Christian marriage in the year 1978. Since then, they enjoyed a matrimonial life for about 36 years before they started experiencing marital problems while blaming each other. Eventually they were separated after the Respondent decided to leave the matrimonial home in 2014. In the year 2023, the Respondent decided to file for divorce and division of matrimonial assets at the Resident Magistrate Court of Moshi. The trial court heard both parties and decided that the marriage between them had broken down beyond repair and granted the divorce and also ordered for division of the matrimonial assets. 1 The appellant was dissatisfied with the order of the division of matrimonial properties by the trial court, she raised three grounds of appeal as follows: First, that the trial magistrate erred in law and fact by dividing matrimonial properties unfairly without consideration of the appellant's efforts thereof; Second, that the trial magistrate erred in law and fact by failure to name all the matrimonial properties jointly acquired by both parties. And third, that the magistrate court erred in law and in fact by dividing some of properties while leaving other matrimonial properties undetermined. These grounds of appeal were followed by the following prayers that; this appeal be granted with costs, the judgment/order of the trial court be quashed and set aside and lastly prayed for any other order as this court may deem just to grant. At the hearing of this appeal the appellant appeared in person and unrepresented whereas the Respondent enjoyed the service of Mr. Martin Kilasara, learned advocate. Parties prayed to proceed with hearing by way of written submissions and this court granted their prayer and gave an order of filling schedule for parties to comply. The appellant was to file her submission in chief on or before 16/10/2024, the respondent reply to be 2 filed on or before 30/10/2024 and rejoinder for the appellant on or before 6/10/2024. Before I could embark on disposing of this appeal, I had first to determine the point raised by the respondent's counsel when replying appellant written submission. The counsel argued that the Appellant has failed to file her written submissions within the prescribed time because she filed the same on 17th October 2024 which is out of time and without leave of the court, he then referred the exchequer

receipt under No. 9901223511 which effected the payment in that date. Further, the counsel for respondent was emphatic and urged this court to see that Appellant's failure to comply with the court order was very fatal and tantamount to failure to prosecute the appeal which is as good as failure to enter appearance when the appeal was called for hearing. The counsel further submitted that the consequence of such failure is dismissal hence prayed for the appeal to be dismissed. He then supported his assertions by inviting this court to consider authorities in the cases of Tanzania Breweries Ltd v. Edson Dhobe and 19 Others, Misc. Civil Application No. 96 of 2000; Venosa Gerald Massawe vs. Julius W. Akyoo, (Misc. Civil Application No. 203 of 2022) [2023] TZHC 3 (TANZLII); Bakema Said Rashid vs Nashon William Bidyanguze and 2 Others, Election Reference No. 1 of 2020 [2020] TZHC 4200 (TANZLII) and John Chuwa vs Anthony Ciza (1992) TLR 233. I have dispassionately considered the above respondent's counsel arguments. It is true as alluded above the schedule for filing written submission was apparent and clear that appellant to file her submission in chief on or before 16/10/2024, the respondent reply to be filed on or before 30/10/2024 and rejoinder for the appellant on or before 6/11/2024. Now the respondent's counsel is alleging that the appellant did file her submission on 17/10/2024 and evidenced the same by the above-mentioned exchequer receipt. The next point to be considered after the said claim is who is supposed to exhibit that the appeal was filed within time? The answer is simple and obvious that is the appellant herself. Another question follows was she given that opportunity to respond the above claims. As depicted above the schedule for filing written submission in appeal always gives the second chance for the appellant to make a rejoinder if any, in this matter the same was ordered rejoinder to be filed on or before 6/11/2024, I have entirely scanned the court record none was filed by the appellant. Therefore, in my considered view the appellant 4 possess that opportunity and did not use it effectively, thus she has acquiesced for that opportunity to defend. Having observed as above, now let me scrutinize the available record to see whether the appellant filed her submission out of time claimed by the respondent. However, before I dwell into such scrutiny, I am aware that it is a trite law that the date of filing is the date of payment of the fees and not that of receipt of the relevant documents in the registry (See rule 3 and rule 5(1) of the Court Fees Rules, 2018 [G.N 247 of 2018] and John Chuwa vs Anthony Ciza (1992) TLR 233. Nevertheless in 2018 to enhance the use of information technology in our judiciary the Judicature and Application of Laws (Electronic Filing) Rules, 2018 GN. No. 148 of 2018, (the Electronic Filing Rules) was promulgated and came into force, and the specific provision is rule 21(1) which states that; "A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected" 5 I am also mindful the new law above prompted the jurisprudence of this land to settle on when the document is legally filed, whether it is upon a document is filed electronically or when the court fee is paid. In the recent case of Mpale Kaba Mpoki vs The Advocates Committee (Civil Appeal No.6438 of 2024) [2024] TZHC 5522 (TANZLII) this court referred its area case of Maliselino B. Mbipi vs Ostina Martine Hyera (Misc. Civil Application 8 of 2022) [2022] TZHC 14256 (TANZLII) and observed that the two pieces of subsidiary legislation should be read harmoniously since they complement each other in order to achieve the purpose for their respective promulgation. This court went on to conclude at page 14 and had this to say; "we have no doubt that the proper position of the law is that a document is

considered electronically filed in this Court, not merely upon timely submission on the system, but having been so timely submitted, when its prescribed court fees are duly paid and such payment exhibited by an exchequer receipt or other legally acceptable receipts to that effect.” (See also *Timamu Billy Mziray vs. Saria Ringo & Another*, Misc. Land Application No. 31 of 2022, High Court, Moshi District Registry, as well as 6 in *Msafiri Omary Sadala vs. Salima Mohamed & Another*, Misc. Civil Application No. 10 of 2021, High Court, Dodoma; *Access Bank Tanzania Limited vs Mahiti Manyori Wambura*, Civil Revision No. 37 of 2021, HC at Dar es Salaam; *Mustapha Boay Akunaay vs Mosses Meimar Laizer* (Legal Administrator of Lucia Letroviki Laizer and 2 Others, Land Reference No. 06 of 2020 and *Bakema Said Rashid vs Nashon William Bidyanguze* (supra) to mention a few.) I know all cases above are persuasive to me, but I have considered the two pieces of law, I am settled, I should also subscribe to the position taken by my fellow learned Brethren in the above decisions. This is because without reading the said law harmoniously together will make the date of a document filed electronically to be the date respective document be properly filed before the Court, which sometime may make the timely existed court fees rules (supra) nugatory. For instance, for unscrupulous parties may use this avenue to the disadvantage of the law requiring mandatory payment of court fees which conclude legal filing. I am saying this because in the current Judiciary electronic case management system “e-CMS” filing of any document is a process, therefore, it passes various stages to be said is properly filed before any court, such as scrutiny, billing, 7 generating control number, payment of court fees and finally approval by Deputy Registrar or Magistrate In charge. Thus, under the above circumstances I am settled it cannot be taken that immediately after a document is uploaded into e-CMS browser then the same becomes filed conclusively. Back to what transpired in compliance with the schedule of this court to file submission as alluded above, I have scanned the physical documents filed by the appellant in this court, her document submitted bears this court stamp which show the same was received on 17/10/2024, also the same was annexed with the exchequer receipt with receipt number 924291283880832 which shows that the payment was effected on 17/10/2024. I have also checked online filing on e-case management system when you click subsequent document button it shows the said submission was uploaded on 16/10/2024 but according to the exchequer receipts no. CB24101742342578 which is available in the e- case management System shows that court fees was paid on 17/10/2024. 8 Therefore, from the above endeavours, in regard to the above authorities, I am of considered view since the fees was paid on 17th October 2024 as shown above, this is the date is considered to be the date of filing appellant submission legally. Now the next question follows did the appellant comply with scheduling order of this court. As alluded above, the appellant was ordered to file her submission in chief on or before 16th October 2024, the record above have proved she filed on 17th October 2024. Thus, the answer to the question above is no. Therefore, as rightly submitted by Mr. Kilasara the failure to file written submissions on the dates scheduled by the court is as good as non- appearing on the date fixed for hearing, thus implies failure to prosecute the case. There are numbers of cases where this court and the Court of Appeal of Tanzania have made it very clear on the importance of adhering to court orders. In the case of *CRDB Bank PLC vs Heri Microfinance Limited & Another* (Civil Appeal No. 20 of 2020) [2024] TZCA 202 (TANZLII) the court when emphasizing on the subject held that orders of the Court are to be respected and implemented. Citing its previous

decision in the case of Olam Tanzania Limited v. Halawa Kwilabya, Civil Appeal No. 17 of 1999 (Unreported), the court held that, 9 "... 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... Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos" See also Godfrey Kimbe vs Peter Ngonyani (Civil Appeal No. 41 of

2014) [2017] TZCA 1 (TANZLII); National Insurance Corporation of (T) Ltd & another vs Shengena Limited, Civil Application No. 20 of 2007 and Patson Matonya vs The Registrar Industrial Court of Tanzania & another, Civil Application No. 90 of 2011 (both unreported). In Shengena Limited (supra) the Court of Appeal maintained 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" 10 The above being the position of the law, it is thus not expected for a party not to comply with an Order of the Court. In the present case, the order of the Court was very clear on when the written submissions should be filed by each party. The order did not give room for parties to file submissions at any time of their convenience. In the circumstance, I am of settled view that the appellant has failed to prosecute her appeal by failing to file her submissions as ordered by this court. On the whole, on account of what we have endeavoured to discuss hereinabove, I find merit on the point raised of failure to submit in time appellant's submission. Consequently, the appeal is dismissed forthwith. As the respondent did not press for costs, I make no order in that regard. It is so ordered. DATED at MOSHI this day of 17th March 2025 X JUDGE Signed by: A. P. KILIMI 11 Court; Ruling delivered this 17th day of March, 2025 in the presence of Mr. Martini Kilasara advocate for Respondent, also Appellant and Respondent present. Sgd; A. P. KILIMI JUDGE 17/03/2025 Court: Right of Appeal duly explained. Sgd; A. P. KILIMI JUDGE 17/03/2025 12

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