

TANZANIA / JUDGMENT

MRONDORO JUDGMENT

COURT
TANZLII

DECIDED
10 October 2024

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA LAND APPEAL NO. 31 OF 2023 (Originating from Misc. Land Application No. 450 of 2022 in the District Land and Housing Tribunal for Mwanza at Mwanza) DAVID GWARABA MRONDORO..... APPELLANT VERSUS SITA NYIGA.....1ST RESPONDENT MARIA SITA.....2ND RESPONDENT

JUDGMENT

10th September & 10th October, 2024 KAMANA, J. In this appeal, David Gwaraba Mrondoro, the applicant, is challenging the decision of the District Land and Housing Tribunal (DLHT) for Mwanza to refuse to grant him an extension of time to file an application to set aside the dismissal order for want of prosecution in Land Application No. 450 of 2016 he filed against Sita Nyiga and Maria Sita, the respondents. The dismissal order was issued on 21 August 2018. Aggrieved by the dismissal order, the applicant instituted Misc. Land Application No. 450C of 2018 in the DLHT for an extension of time to file an application to set aside the dismissal order. However, the said 1 application was struck out for technical reasons. Adamantly, the appellant filed Misc. Land Application No. 450D of 2021 seeking an extension of time to set aside the dismissal order. The DLHT heard the application and dismissed the same for want of merits. Aggrieved, the appellant approached this Court armed with the following grounds:

1. That the trial tribunal erred in law and fact by holding that the applicant lacked sufficient reasons to warrant the order to enlarge time.
2. That the trial tribunal erred in law and fact by holding that the applicant failed to account for each day of delay.
3. That the trial tribunal erred in law and fact by refusing the applicant’s prayers for reasons that the date of collection of the ruling is unknown and the same was not attached with a receipt.
4. That the trial tribunal erred in law and fact by refusing the applicant’s prayers as to the reason that the impugned ruling was illegally pronounced. When the matter was set for a hearing on 7th August 2024, Mr. Ditrick Raphael, learned Counsel for the second respondent, appeared. Further, Mr. Erick Tumaini, learned Counsel, holding the brief of Mr. Innocent Michael, learned Counsel for the appellant, informed this court 2 that Mr. Michael

was ill. The first respondent did not enter an appearance. Given the circumstances, it was ordered that the matter should be disposed of by way of written submission and *ex parte* against the first defendant. So far as the appellant was concerned, his submission was ordered to be filed and served no later than 14th August, 2024. The second respondent was ordered to file and serve her written statement no later than 21st October, 2024. The applicant's rejoinder was set to be filed no later than 28th August, 2024. When replying to the appellant's submission, Mr. Raphael, learned Counsel for the second respondent drew the attention of this Court that the appellant did not comply with the scheduling order in filing his submission. Given that, the learned Counsel urged this Court to consider the appellant's failure to comply with the scheduling order as a non-appearance warranting dismissal of the application for want of prosecution. To buttress his stance, the learned Counsel cited the case *Shabani Amuri Sudi (The Administrator of the Estate of the Late Amuri Sudi) v. Kazumari Hamisi Mpala*, Misc. Land Application No. 30 of 2019. In his rejoinder, Mr. Michael, learned Counsel for the appellant, contended that the application was filed within the time as it was filed on 3 13th August, 2024. He amplified that the control number was lately generated. He argued that the generation of control numbers is out of the parties' control. He implored this Court to invoke the oxygen principle under section 3B of the Civil Procedure Code, Cap. 33 [RE.2019]. He further urged this Court not to be bound by technicalities but by substantive justice as provided by section 45 of the Land Disputes Courts Act, Cap. 216 [RE.2019]. In determining the controversy, I perused the electronic Case Management System (eCMS). According to the system, the appellant's submission was received on 14 August 2024. As per the Exchequer Receipt, Mr. Innocent Michael, learned Counsel for the appellant, paid the required fee on 19 August 2024. It is true as reflected in the system that the appellant's submission was received on 14th August, 2024. However, that does not mean, in my view, that the appellant filed his submission within the time, without payment of the requisite court fees. This is because as per Exchequer Receipt, the payment was made on 19th August, 2024 which is beyond the time set for filing his submission. I understand Mr. Michael's argument that the generation of control numbers is not within the parties' scope. However, as per Rule 24 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 (GN 4 No.148 of 2018), the appellant could informally and *ex parte* apply to the Registrar for appropriate relief, if for any reason, the electronic filing system was not operational. In that case, the argument that the generation of control number was not within the parties' power, in my view, is lame. Having taken that position, I wish to restate the cardinal principle that the filing of the document before the Court is considered complete when the prescribed court fees are paid. As a matter of law, the coming of the Rules was not meant to supersede the established principle that the filing of documents before the court is complete upon payment of court fees. In this, I am persuaded by the position taken by this Court in the case of *Rex Investment Limited v. Mkombozi Commercial Bank*, Commercial Reference No. 8 of 2013-HC (Unreported) where it was held: 'On my part, I fully subscribe to the position taken by my learned Brethren in the above decisions. The reason for embracing the position is obvious and logical, that is, if physical filing of document does make the document properly filed before the Court unless the filing fee is

paid, it naturally follows that electronic filing, which in my view, is a substitute of physical filing cannot constitute proper 5 filing unless the filing fee is paid. See also the case of John Chuwa vs Anthony Ciza 1992 [TLR] 233.' That being the case, it is my holding that the appellant's failure to file the written submission within the stated time amounts to non-appearance. In the case of Shabani Amuri Sudi (The Administrator of the Estate of the Late Amuri Sudi) (Supra), this Court had this to state: 'In fact, failure to file written submission on the dates scheduled by the court is as good as non-appearance on the date fixed for hearing. In P3525 LT Idahya Maganga Gregory Vs. 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 consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be." 6 Fortified by that position, it flows naturally that the application is dismissed for want of prosecution. Worth noting is that sections 3B and 45 of Cap. 33 and Cap. 216 respectively cannot save the appellant's boat from capsizing. The overriding objective and the need to do substantive justice were not meant to save a party who fails to prosecute his case within the scheduled time. It is so ordered. Right To Appeal Explained. DATED at MWANZA this 10th of October, 2024. KS KAMANA JUDGE 7

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