

TANZANIA / JUDGMENT

KATEMANA JUDGMENT

COURT
TANZLII

DECIDED
29 November 2024

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA LAND APPEAL NO. 6753 OF 2024 (Arising from Misc. Application No. 159 of 2023) EDNA EVARIST KATEMANA.....APPELLANT VERSUS ACCESS MICROFINANCE BANK (T) LTD.....1ST RESPONDENT ADILI AUCTION MART CO. LTD.....2ND RESPONDENT VICTOR BENEDICTOR MGANDA.....3RD RESPONDENT MICHAEL PETRO LUBISI.....4TH RESPONDENT

JUDGMENT

24th October & 29th November, 2024 KAMANA, J. On 3rd November, 2024, by leave of this Court, the parties were ordered to file their written submissions. According to the scheduling order, the appellant was to file and serve her submission on or before 10th October, 2024. When submitting, Ms. Happiness Mangowi, learned Counsel for the first respondent, contended that the appellant’s submission was filed out of the scheduling order as it was filed on 11th October, 2024. In her opinion, such failure amounts to failure to prosecute her case which warrants the dismissal of the appeal with costs. 1 Responding, Mr. Edward John, learned Counsel for the appellant contended that the appellant’s submission was filed on 9th October, 2024 and was admitted on 10th October, 2024. He amplified that the submission was filed manually on 11th October, 2024, and the endorsement bears the date when it was presented to the court and not the date when it was electronically filed. Given that, he held the view that the submission was filed within the scheduling order. In determining the controversy, I consulted an electronic Case Management System (eCMS). According to the system, the appellant’s submission was received in the system on 8th October, 2024. Further, according to the Exchequer Receipt, the Control Number for paying Court fees was issued on 11th October, 2024. It is true as reflected in the system that the appellant’s submission was received on 8th October, 2024. However, that does not mean, in my view, that the appellant filed his submission within the time, without the payment of the requisite court fees. This is because as per the Exchequer Receipt, the payment was made on 11th October, 2024 which is beyond the time set for filing his submission. I understand 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 No.148 of 2018), 2 the appellant could informally and exparte apply to the Registrar for appropriate relief, if for any reason, the electronic filing system was not operational. 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 filing unless the filing fee is paid. See also the case of *John Chuwa vs Anthony Ciza* 1992 [TLR] 233.' 3 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) v. Kazumari Hamisi Mpala*, Misc. Land Application 30 of 2019-HC (Unreported), 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." 4 Fortified by that position, it flows naturally that the application is dismissed for want of prosecution. I order no costs. It is so ordered. Right To Appeal Explained. DATED at MWANZA this 29th of November, 2024. KS KAMANA JUDGE 5

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