

TANZANIA / JUDGMENT

RULING ISAACK DAUD ELIAS VS MUST Final

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28 November 2024

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB – REGISTRY AT MBEYA MISCELLANEOUS CIVIL CAUSE NO. 7476 OF 2024 CASE REFERENCE
NO. 202404061000007476 ISACK DAUD ELIAS APPLICANT
VERSUS MBEYA UNIVERSITY OF SCIENCE AND
TECHNOLOGY(MUST)1ST RESPONDENT THE SENATE OF THE
MBEYA UNIVERSITY OF SCIENCE AND TECHNOLOGY2ND
RESPONDENT THE ATTORNEY GENERAL3RD RESPONDENT

RULING

19th & 28th November 2024 NONGWA, J. The applicant Isaack Daudi Elias was a first-year student pursuing Diploma in Mechatronic at the Mbeya University of Science and Technology (MUST) for the academic year 2022/2023. In December, 2022 they sat for a first semester examination in Fundamentals of Electrical Engineering Module with code EE6170. Before they entered examination room together with other students, he surrendered all belongings including a smart phone to the invigilators. It is stated while he was seated doing his examination one of the invigilators by the name of Mr. Kaunda approached him with examination irregularity form and forced him to sign on ground that he was found with a smart phone inside the examination room. After finishing examination, he approached the invigilator for return of his belongings he surrendered in vain. When the results came out marking start of the second semester, he could not access his results and was notified through his smartphone that his result was withheld. It was until in May 2023 when was informed by the Minister of Education of Student Organization to go and collect a letter to the Director of Undergraduate Studies. Upon reading the letter, it informed him was found with examination irregularity contrary to examination regulation and was therefore discontinued from studies. That the decision was reached without charging him with examination misconduct and in defiance of rules of natural justice. He has approached this court to intervene by prerogative orders of Certiorari and Mandamus. Through a counter affidavit sworn by Lugano Mwakilasa, senior state attorney, the application is opposed. It is stated that the applicant was found with the smart phone during examination which is examination irregularity. That hearing was done by the 64th Special Undergraduate 2 Studies Committee, the applicant was summoned, appeared and was given opportunity to be heard. Thus, prayed the application be

dismissed. On 15th August 2024 the matter was scheduled for hearing, present were Mr. Brice Kessy, advocate h/b Paul Kaunda for the applicant whereas the respondents were represented by Mr. Michael Fyumagwa, State Attorney. Mr. Kessy prayed hearing of application be by filing submission. The state attorney had no objection. The court indorsed the prayer and drawn a scheduling order. It was ordered that the applicant file his submission in chief on 29th August 2024, reply submission by respondents on 12th September 2024, rejoinder if any on 19th September 2024 and mention on 19th September 2024. The applicant and his advocate did not file submission in chief as ordered. This prompted Edina Mwamlima, state attorney applying for perusal of records to see if the applicant filed any submission, she found none. On 12th September 2024, the respondents filed submission in which they have expressed the stance on the applicant's failure to file written submission in support of the application as ordered. The state attorney submitted that hearing of application was ordered to be by filing written submissions. That on 11th September 2024 made file perusal and found the applicant had not lodged submission in chief as ordered by this court. 3 She argued, when a court prescribes a certain action to be taken in a particular period or particular manner, that action must be carried out in the time or manner prescribed by the Court. Ms. Mwamlima supported the argument with the case of Karori Chogoro vs Waitihache Merengo, Civil Appeal No. 164 of 2018 [2022] TZCA 83 (1 March 2022; TanzLII) in which it was stated that Court orders should be respected and complied with. Courts should not condone such failures. To do so is to set bad precedent and invite chaos. Counsel added, failure to lodge written submission as ordered is tantamount to failure to prosecute or defend a case. Ms. Mwamlima fortified the stance with the case of Godfrey Kimbe vs Peter Ngonyani, Civil Appeal No. 41 of 2014 [2017] TZCA 1 (25 July 2017; TanzLII). From the submission made prayed the application be dismissed with costs. I have considered the submission by the respondents, as rightly stated by the state attorney on 15th August 2024 present were Mr. Brice Kessy holding brief of Mr. Paul Kaunda for the applicant and Mr. Michael Fyumagwa, state attorney for the respondents. By a prayer from Mr. Kessy which was not objected to by the state attorney, it was ordered that the application be disposed by filing written submissions. I ordered 4 that the applicant should lodge the submissions in chief in support of the application on 29th September 2024, reply by the respondents on 12th September 2024 and rejoinder if any by the applicant on 19th September

2024. To the time of composing this ruling the applicant and his advocate had not filed any written submission. I entirely agree with the submission of the state attorney that it is now part of our laws that failure to file written submission as ordered is tantamount to failure of ones to prosecute or defend the case. see Godfrey Kimbe (supra). Further it is a disobedience of court order and directions in the conduct of the proceedings. In this case the court ordered parties to file submission but the applicant or his counsel intentionally did not implement that order. That is disobedience of a lawful order of the court. It is well settled that orders of the Court are to be respected and implemented. Faced with akin situation in the case of Olam Tanzania Limited vs Halawa Kwilabya, Civil Appeal No. 17 of 1999 (Unreported) cited in CRDB Bank PLC vs Heri Microfinance Limited & Another, Civil Appeal No. 20 of 2020 [2024] TZCA 202 (19 March 2024; TanzLII) the court had opportunity

to discuss this point, it stated: 5 'Now what is the effect of the court order that carries instruction which are to be carries out within a predetermined 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... Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos.' In this matter the scheduling order was made in presence of Mr. Brice Kessy, advocate holding brief of Paul Kaunda his fellow advocate who was aware of the instruction of the case. Once an advocate accepts to hold brief of his fellow advocate, he has the duty of giving feedback of what transpired in court and the direction thereof. The latter has also unfettered obligations to make sure that he inquires and receives feedback of what transpired for implementation of the direction of the court. It is noteworthy that it is almost three months when the applicant was ordered to file submission in chief to date has not shown up in court and follow the progress of the case. By not filing any submission in chief contrary to the order of the Court, the applicant has therefore intentionally failed to prosecute the application he filed and the Court is entitled to 6 dismiss the same for want of prosecution as if he did not appear at the hearing. In the premises Miscellaneous Civil Cause No. 7476 of 2024 stand dismissed. Owing to the nature of the application, I make no order as to costs. V.M. NONGWA JUDGE 28/11/2024 Dated and Delivered at Mbeya this 28th November 2024, in presence of Mr. Michael Fyumagwa and Ms. Mwamvua Salum both learned state attorneys for the respondents. V.M. NONGWA JUDGE 7

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