

TANZANIA / JUDGMENT

Muhsin Hassan Muhsin vs Ahmada Bakari Chuo

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TANZLIIDECIDED
21 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF DAR ES SALAAM AT DAR ES SALAAM CIVIL APPEAL NO. 2250 OF 2025 MUHSIN HASSAN MUHSIN..... APPELLANT VERSUS AHMADA BAKARI CHUO RESPONDENT (Appeal from the judgment and decree of the District Court of Mafia at Mafia dated 21st January 2024 in Civil Appeal No. 28108 of 2024)

RULING

5th and 24th March 2025 KISANYA, J.: The appellant, Muhsin Hassan Muhsin, initiated Civil Case No. 22 of 2024 before the Primary Court of Mafia, claiming TZS 2,400,000/= for a breach of a house lease agreement. While he initially secured a favorable judgment, his success was brief, as the District Court of Mafia (the first appellate court) overturned the decision upon hearing an appeal filed by the respondent, Ahmada Bakari Chuo. In a bid to challenge the decision of the first appellate court, the appellant has filed this appeal, relying on four grounds. For reasons that will become apparent in this ruling, I do not find it essential to reproduce them. 1 Pursuant to the record, when this appeal was called for hearing on 5th March 2025, the parties' counsel proposed that it be disposed of through written submissions. The Court acceded to their request and proceeded to issue the following order: “As prayed by the parties, this matter shall be disposed of by way of written submission. Accordingly, I order as follows.

1. The appellant’s submissions in chief to be filed by 7th March 2025.
2. The respondent’s submissions in reply to be filed by 11th March 2025.
3. The appellant’s rejoinder submissions, if any, should be filed by 14th March 2025.
4. Judgment to be delivered on 24/03/2024 at 0900 AM.” The structure of the above order left no room for deviation, as the parties were assigned specific deadlines for filing their written submissions. Despite this, the appellant submitted his submission in chief on 11th March 2025, which was the last day for the respondent to submit his reply. Consequently, the respondent was unable to respond to the appellant’s submission. When this matter was called for judgment today, Mr. Ferdinand Makore, learned Advocate for the appellant, conceded that the appellant’s 2 submission was filed beyond the time set by the court.

However, he claimed that the delay resulted from a misunderstanding between him and the advocate who had held his brief regarding the filing timeframe. He therefore sought leave of the Court to consider the submission already filed, and requested an extension of time for the respondent to file a reply submission. The respondent did not object to this request. It is a trite legal principle in this jurisdiction that court's orders must be strictly observed. To condone disobedience of court's orders would set a dangerous precedent, eroding judicial authority and inviting disorder. See *Olam Tanzania Limited vs. Halawa Kwilabya*, Civil Appeal No. 17 of 1999 (Unreported), as cited with approval in *CRDB Bank PLC vs. Heri Microfinance Limited & Another*, Civil Appeal No. 20 of 2020 [2024] TZCA 202 (TanzLII), where the Court of Appeal held that: "... 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" ³ Bearing that principle in mind, non-compliance with a court's order on the timely filing of submissions is invariably treated as a failure to prosecute the case, a position supported by a wide range of legal precedents. For instance, in *Patson Matonya vs The Registrar Industrial Court of Tanzania & Another*, Civil Application No. 90 of 2011 [2017] TZCA 1143 (5 July 2017), the Court of Appeal emphasized this position in the following terms; Failure by a party to lodge written submissions after the Court has ordered a hearing by written submissions is tantamount to being absent without notice on the date of hearing - see *National Insurance Corporation of (T) Ltd & another v. Shengena Limited*, Civil Application No. 20 of 2007 (unreported). In that case an application for review was dismissed in the High Court because the applicant failed to prosecute it by not filing written submissions in time as ordered. On appeal to this Court, it was observed: "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]. ⁴ Given the legal position outlined above, the appellant's failure to file submissions as directed by the Court, coupled with the absence of an application for an extension of time, amounts to his failure to appear for the hearing without notice. As a result, and in accordance with Rule 13(2) of the Civil Procedure (Appeals in Proceedings Originating in Primary Court) Rules, G.N. No. 312 of 1964, this Court is compelled to dismiss his appeal for want of prosecution. Ultimately, this appeal is dismissed for want of prosecution. Since the respondent has not objected to the appellant's request, each party shall bear its own costs. DATED at DAR ES SALAAM this 24th day of March 2025. S.E. KISANYA JUDGE Delivered virtually this 24th day March, 2025 in the presence of Mr. Ferdinand Makore, learned Advocate for the Appellant, Mr. John Jimmy Kisamo, learned Advocate for the Respondent, and Ms. Zawadi, RMA. S.E. KISANYA JUDGE 24/03/2025 5

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