

TANZANIA / JUDGMENT

20100504 TZCA Mwanza

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4 May 2010

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IN THE COURT OF APPEAL OF TANZANIA ATMWANZA (BK} CIVIL APPLICATION NO. 2 OF 2008
NATHAN RUVUGO AND 109 OTHERS APPLICANTS VERSUS THE GENERAL
MANAGER KCU (1990} LIMITED RESPONDENT (Application for Extension of Time to
serve Notice of Appeal to the Respondent from the decision of the High Court of Tanzania at
Bukoba} (Lyimo, J.) dated the 19th day of September, 2008 in HC Employment Civil Appeal No.
1/2007

RULING

27 April & 4 May, 2010 MSOFFE, J.A.: This is an application for enlargement of time to serve on the respondent a notice of appeal against the decision of Lyimo, J. dated 19/9/2008 in High Court, Bukoba, Employment Civil Appeal No. 1 of

2007. The application is by way of a notice of motion and is supported by an affidavit deposed to by Mr. Mathias Rweyemamu. It is not in dispute that pursuant to the decision of Lyimo J. the applicants took some steps towards prosecuting the intended appeal. In this regard, on 29/9/2008 the applicants, through Mr. Mathias Rweyemamu their learned advocate, wrote a letter to the District Registrar, Bukoba, applying for copies of proceedings and copied it to Mr. Aaron Kabunga, learned advocate for the respondent. On 3/10/2008 the applicants filed an application for leave to appeal to the Court of Appeal. There is no dispute that both the letter and the application were received or lodged in the High Court on 3/10/2008. Indeed, the chamber summons in support of the application was signed on 3/10/2008 by Mr. Mashauri, the Acting District Registrar. According to Mr. Mathias Rweyemamu, learned advocate for the applicants, a notice of appeal against the above mentioned decision was also lodged on 3/10/2008 within time alongside the other documents. But at that time Mr. D.E. Mrango, the District Registrar, was not at Bukoba. He was in Dar es Salaam pursuing his transfer to the High Court, Land Division. In his absence, he had left specific and standing instructions that notices of appeal to this Court should only be signed by him. In this sense, when he resumed office on 13/10/2008 he signed the notice of appeal retrospectively to show that it was lodged on 3/10/2008, when in fact it was not signed on 2 that day. On 15/10/2008 Mr. Rweyemamu collected the notice signed by the District Registrar. By then the period of seven days prescribed under Rule 77 (1) of the then Tanzania Court of Appeal Rules, 1979 (hereinafter the Rules) had already expired, hence

this application. On the other hand the respondent Union, in exercise of its discretion under Rule 53 (1) of the Rules did not file an affidavit in reply. At the hearing of the application Mr. Kabunga contended that in the absence of affidavits by Messrs. Mrango and Mashauri; the assertion by Mr. Rweyemamu is baseless. In this sense, Mr. Kabunga went on to say, Mr. Rweyemamu is trying to suggest that Mr. Mrango forged a document. According to Mr. Kabunga, Mr. Mrango signed the notice on 3/10/2008. With respect, I can see the force of argument in Mr. Kabunga's powerful submission. However, in the absence of strong and compelling evidence, I am not prepared to be drawn into making a conclusive decision as to whether or not Mr. Mrango forged the 3 document. It will suffice to say that I will decide the matter in the manner in which I will demonstrate hereunder. As already observed, after the above decision the applicants took prompt steps in their desire to prosecute the intended appeal. If I may repeat, the steps included the letter applying for copies of proceedings, the application for leave to appeal and the filing of this application almost immediately after collecting the signed notice of appeal. In my view, these steps were not consistent with the sort of applicants who were all out to delay the appeal process. On the contrary, by putting the appeal process into motion promptly the applicants were in fact executing their true and honest desire to appeal without wasting time. As stated above, except for the notice of appeal, there is no dispute that the letter applying for copies of proceedings and the application for leave to appeal were presented to the Court on 3/10/2008. If so, it occurs to me that since the notice of appeal was also part of the appeal process the chances and possibility are that it was also lodged on 3/10/2008 save that it was not until much later 4 that it was signed by the District registrar. In this sense, the probability is that Mr. Rweyemamu is correct in his assertion that the notice of appeal was actually lodged on 3/10/2008 save that the District Registrar signed it later. For this reason, I will give the applicants the benefit of doubt. In the event, after considering this matter carefully and objectively I hereby grant the application with costs. The applicants are hereby ordered to serve on the respondent a copy of the notice of appeal within a period of seven days from the date of delivery of this Ruling. DATED at MWANZA this 30 th day of April, 2010. J. H. MSOFFE JUSTICE OF APPEAL 5

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