

TANZANIA / JUDGMENT

abdallah k mgonja another vs permanent secretary ministry of works others 2003 tzhc 73 18 march 2003

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TZHCDECIDED
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IN 'ille HIGil OOUET Oi? ^ jjs SAL^'iM M I X . CIVIL CAUSE NO. 63 OT 2002 AEDALLAH IC. MGONJA APPLICANTS 2 . ROBINSON MONYO) V ersus 1 . THE H^lfINKNT SECRETARY MINI; - TKY) * OF WORKS) 2 . THE HON. ATTORNEY GENERAL) 3 . THE NATIONAL TRANSPORT COT-IPANY) . . RESPONDENTS (IN RECEIVERSHIP)) if. THE PRESIDENTIAL PARASTA1AL SECTOR REFORM COMMISSION (PSRC)) R U E L.il. £ fteraa_«_ J.« In J5ieicellanso«e C i v i l Cause No. 6 3 / 2 0 0 2 the a p p l i c a n t s , A b d a l l a h K . M g o n j a and Robinson, I onyo through th e l e g a l s e r v i c e s o f M , J. LUGAZIYA, Advocate o f Bar os Salaam law Chambers, lod ged A -chamber sttninms se e k i n g f o r t h e f o l l o w i n g o r d e r s : (i) g r a n t o f l e a v e t o f i l e a n a p p l i c a t i o n f o r p r e r o g a t i v e o r d e r s a g a i n s t t h e P e r m a n e n t S e c r e t a r y , M i n i s t r y o f W o r k s a n d t h e P r e s i d e n t i a l P a r o e t s t t a l s e c t o r B e T o r n C o m m i s s i o n (P # S . R . ' " ») , f i r s t a n d ^ t - t h r e s p o n d e n t s . C i i) o o e t s a n d : a y o t h e r r e l i e f s d e e m e d a p p r o p r i a t e * T h e a p p l i c a t i o n f i l e d t r o c l a r s e c t i o n 2 (2) o f t h e J u d i c a t u r e A p p l i c a t i o n o f L e w s O r d i n a n c e , S e c t i o n 1 7 (2) o f t h e L a w R e f o r m (F a t a l A c c i d e n t s) a n d M i s c e l l a n e o u s P r o v i s i o n s O r d i n a n c e C a p 3 6 0 a s a m e n d e d b y A c t N o . 5 5 o f 1 9 6 8 , s e c t i o n 1 ? o f A c t N o . 2 7 / 9 % . O r d e r X X X V I I i i u l e s 1 a n d 2 a n d s e c t i o n 9 5 o f t h e C i v i l P r o c e d u r e C o d e 1 9 6 6 i s r c c o m p e n i e d b y t h e j o i n t a f f i d a v i t o f t h e a p p l i c a n t 2 I t i s d e p e n d e d b y t h e a p p l i c . n t s t h a t t h e y a r e t h e l a w f u l t e n a n t s o f h o u s e s o n P l o t N o . 3 5 T H E E s t a t e K i j i t o n y a m a a n d P l o t N o . 8 3 A D r i v e I n n A r e a t h e p r o p e r t y o f t h e N a t i o n a l t r a n s p o r t C o m p a n y , t h e 3 r d R e s p o n d e n t s a n d t h a t t h e y h a v e b e e n n o t i f i e d t h a t t h e p r e m i s e s h a v e r e v e r t e d t o t h e 1 s t r e s p o n d e n t w h i l e t h e i r t e n a n c y a g r e e m e n t s s u b s i s t s . " T h a t f o l l o w i n g t h i s m o v e t h e a p p l i c a n t s a r e a p p r e h e n s i v e t h a t t h e i r r i g h t s u n d e r t h e t e n a n c y a g r e e m e n t s w i l l b e c o m p r o m i s e d , h e n c e t h e i r a p p l i c a t i o n s e e k i n g o r d e r s o f p r o h i b i t i o n , c e r t i o r a r i a n d m a n d a m u s a g a i n s t t h e f i r s t a n d ^ t h r e s p o n d e n t s r e s p e c t i v e l y . O n 1 0 t h A p r i l 2 0 0 2 I g r a n t e d l e r v e t o t h e p a r t i e s t o a r g u e t h e a p p l i c a t i o n t h r o u g h w r i t t e n s u b m i s s i o n s a n d a s c h e d u l e t o t h a t e f f e c t w a s a g r e e d t o . R u l i n g v ® s t o b e d e l i v e r e d o n 0 3 / 0 7 / 2 0 0 2 . A s n e i t h e r t h e a p p l i c a n t s n o r t h e r e s p o n d e n t s c o m p l i e d w i t h t h e o r d e r o f t h e c o u r t : o f i l e t h e w r i t t e n s u b m i s s i o n s , t h e c o u r t o n 0 3 / 7 / 2 0 0 2 d i s m i s s e d t h e a p p l i c a t i o n f o r l a c k o f p r o s e c u t i o n . O n r e c e i p t o f t h e d i s m i s s a l o r d e r o f 3 r d J u l y 2 0 0 2 t h e a p p l i c a n t s h a v e f i l e d a c h a m b e r s u m m o n s u n d e r s e c t i o n 9 5 a n d O r d e r I X R u l e 1 3 f o r o r d e r s t h a t t h e d i s m i s s a l o r d e r b o s e t a s i d e a n d t i m e

be extended for filing of written submissions. In the affidavit in support of the chamber application Mr, Mutabaazi Julius Lugaaiya has deposed that his sick relative who even though passed away on 23rd June 2002:: prevented him from complying with the order of filing the written submissions. Furthermore the application under reference, contains matters of great public importance as such the interests of justice require that it be disposed on merit* In reply the respondents aver that the reasons for non compliance with the order of 10.A/2002 are neither sufficient nor justifiable to warrant the setting aside of the respective order. Careful consideration of the arguments for and against the application for setting aside the dismissal order and restoration of the main application clearly shows, lack of sufficient and justifiable cause/reason as required by law. •> **/53 It npy be true that the learned advocate was attending in a sick relative who even though passed away on 23rd June 2002, but the record clearly indicates that the applicant was ordered to file his submission in chief and the rejoinder on 16/5/2002 and 5/6/2002 respectively. There is every reason to opine that the applicants advocate had ample time to take care of his sick relative as well as file the written submissions in compliance with the order of the court. In the circumstances I am satisfied that the application before me has failed to satisfy the requirements of Order IX Rule 13 (1) for lack of sufficient cause and I dismiss it with costs. Order accordingly. S, Hie ma JUDGE Court., Ruling delivered before Mr, Kamba and Mr« L ugaziya learned advocates for the parties this 18/3/2003. S. Xheiaa JUDGE 18/3/^003

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/abdallah-k-mgonja-v-the-permanent-secretary-ministry-of-works-setting-aside-dismissal-tzhc-2003

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