

TANZANIA / JUDGMENT

PC CIVIL APPEAL NO 18 of 2021 AHMADI MKAUJA ISSA NEWNEWNEW

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1 January 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MTWARA SUB-REGISTRY
ATMTWARA PC CIVIL APPEAL NO.18 OF 2021 (Originating from Civil case No.8 of 2021 of
Tandahimba Primary Court and Civil Appeal No.5 of 2021 from Tandahimba District Court)
AHMADI MKAUJA ISSA APPELLANT VERSUS MUSTAFA SAIDI
NAMWAKA RESPONDENT

RULING

Date of last Order: 6/4/2023 / Date of Ruling: 1/8/2023 / LALTAIKA, J, , (, The Appellant; herein AHMADI MKAUJA ISSA unsuccessfully sued the Respondent MUSTAFA SAIDI NAMWAKA at Tandahimba Primary Court (the-trial court) in Civil case No.8 of 2021. On appeal, the District Court of tandahimba upheld the decision of the trial court. Still aggrieved, the Appellant appealed to this Court by way of a Memorandum of Appeal containing two grounds. For reasons that will be clearer soon, I choose not to reproduce them here. Page 1 of 6 It is noteworthy that the total amount of money claimed is merely 1,5000, 000/= (One Million five hundred thousand only). It appears that the Respondent has been struggling to pay the debt and managed to pay 370,000 so far. This is what the Appellant told this court on the 23rd of February 2023 when he entered appearance in the absence of the Respondent: < \ v '7 received an SMS from the Respondent Mustapha Said! Namwaka. He claims that he has no fare to the court. He lives in Dinduma along the main road to Newala before Malota. I live in Nanyanga. It is about 14,000 may be including bodaboda it is 20,000 max. I cannot be sure he really has no money. He promised that he may get fare in March. I am getting tired. The money he is giving me is peanut. The last time he gave me 370,000/= out of the debt of 1,500,000/= which is the whole debt. I advise that A the, court asks him what he has which can be sold to pay the debt. I do not know what belongs to him." ,A/The Appellant's response when he was impelled by this Court to explain why he was not willing to wait for the Respondent to pay the remaining amount (balance) by instalment, is what informed this Court to arrive to this decision to strike out the appeal earlier today. Page 2 of 6 As a law-abiding citizen the Appellant has been attending the court since 2021. It appears that he was told by the unnamed legal aid provider/ document drafter who assisted him to file this appeal, that failure to appear in court would lead to adverse consequences. He took that to mean criminal sanctions. As a result, he has spent his hard-earned income to travel from Tandahimba to this

court many times. This court must find a way of reducing that burden imposed upon the Appellant who has committed no crime. . X. When the Appeal was called for hearing early today, neither the appellant nor the Respondent appeared. This has been the general rule rather than an exception. As a result, the appeal has been backlogging in C XV this court for too long. The procedure obtained in our jurisdiction in the event of nonappearance is provided for under Order IX Rule 2 of the Civil Procedure Code Cap 33 RE 2022, For avoidance of doubt, the provision is reproduced bellow: X. X “ "Where neither party appears when the suit is called on forbearing the court may make an order that the suit be dismissed." The key phrase inviting our interpretation is "may dismiss the appeal". Since, in my opinion, the provision is not coached in mandatory terms "shall" Page 3 of 6 this court can take another route to ensure that the ends of justice are met. Given the Unique contextual backdrop of this appeal stated earlier, I am inclined to strike it out. I have no doubt that the Appellant is no longer under anydbligation to spent TZS 20,000 as fare from Tandahimba to this court everytwo or ■ three weeks. He can wait for the Respondent to honor-his'promise to pay the remaining debt in the next harvesting season,Njhsimu wa mavuno". "f\5 Should the Respondent choose not to do so/the Appellant can still knock the door of this court without fear that the doors would be locked permanently c“% ■ on the padlock of res judicata andothertechnicalities. % I should emphasize.thaj: the beauty of the common law is its ability to %X accommodate logical reasoning in balancing between procedural law and ,A substantive justice/FheJflexibility which is not there in other legal systems is C X% praiseworthy.Thefo I lowing oft-quoted words by an Lahon J. (as he then was)XhdiaK Judge, in Dhannalal v. Kalawatibai (2002) 6 SCC 16 sum 'AX X/XX up thi^ienviable characteristic of the common law legal system: "...a procedural law is always in aid ofjustice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always Page 4 of 6 subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law." Finally, I am inclined to advice the anonymous legal drafter to embrace the spirit of out of court settlement. An overtly litigious citizenry especially with their abode in the rural areas is economically inefficient. The money used to pay travel costs to court premises could have been put to other Cxx equally important endeavors. Not every dispute between neighbours should lead to a court case. Reconciliation and other forms of mediation should be Page 5 of 6 Court: This Judgment is delivered under my hand and the seal of this court on this 1st day of August 2023 in the absence of both the Appellant and the Page 6 of 6

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Prepared on 14 October 2026 · Esheria