

TANZANIA / JUDGMENT

dadu kidendei vs shadia salehe kanani 2021 tzhc 3539 31 may 2021

COURT
TZHCDECIDED
31 May 2021

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. loo IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY AT MWANZA MISC LAND APPLICATION NO. 18 OF 2021 (Arising from decision of the High Court of Tanzania at Mwanza (Hon. Tiganga,)) dated 28° December, 2020 in Land Appeal No. 10 of 2020) DADU KIDENDEI APPLICANT VERSUS NATIONAL MICROFINANCE BANK PLC 1 sr RESPONDENT SHADIA SALEHE KANANI 666.666636666366..., 2ND RESPONDENT

RULING

15 & 31.05.2021 RUMANYIKA, J With respect to judgment and decree of this court (Tiganga, J) dated 28.12.2021, now brought under Sections 11(1) and 5 (1) (c) of the Appellate Jurisdiction Act Cap 141 (R.E 2019) the two-fold application is for extension of time within which one to apply for leave and leave of appeal. It is supported by affidavit of Ernest Masanga Makene, whose contents Mr. Makene learned counsel for Dadu Kidendei (the applicant) adopted on 18.05.2021 during audio teleconferencing. Dr.George 1 Mwaisondola learned counsel appeared for National Microfinance Bank PLC (the 1 respondent). Shadia Salehe Kanani (the 2° respondent) appeared in person. Mr. Makene learned Counsel submitted; (a) that although on 29.12.2020, hardly a day after the impugned judgment was pronounced he applied for copies of judgment and proceedings, and, as the judge had now proceeded to annual leave and the applicant was promised to collect the copies in early February, the applicant did not get the copies until on 03.02.2021 much as for the purposes of computing limitation the period the certified copies had been awaited it needed be excluded (Rule 45A (2) of the Court of Appeal Rules, 2019 refers) (b) that there were points of illegality that solely constituted a sufficient ground for extension of time n amely; (1) in terms of timing the applicant lied in the supporting affidavit ie. It was sworn in 2013 but the loan was actually applied and released in 2015 (ii) it was not, in the affidavit sufficiently established whether the 2° respondent was or wasn't married (iii) the property attached and sold it wasn't collateral per se the impugned judgment and decree therefore were not executable (iv) contrary to law, by allowing the appeal, the 2° respondent was given relief not sought by her (v) the appeal was 2 ¢ t a determined in absence of the 2° respondent the latter therefore wasn't heard. Dr. George Mwaisondola learned counsel submitted; (a) that actually the alleged points of illegality were worth it not the name as no noble points of general importance or law upon evaluation were determinable by the Court of Appeal of Tanzania (Case of BBC v.

Erick Sikujua Ng'imaryo, Civil Application No. 138 of 2004 (CA) unreported (b) as for physical location of the property therefore an unexecutable decree that one it had not been the issue before much as in its decision this court held that as spouse the applicant's consent was uncalled for (c) the 2° respondent may have not expressly prayed for her appeal to be allowed yes, but she prayed that decision and orders of the trial DLHT be quashed and set aside respectively (d) that for the reason of her default the court having had ordered ex parte hearing and service by publication had been accordingly effected, there was nothing upon which to fault the court. We humbly submit and pray that the application is lacking and it is liable to be dismissed with costs. Dr George Mwaisondola learned counsel further contended. On her side, but unusually briefly, the 2° respondent submitted that against her the court had properly proceeded ex parte. That is it. 3 The issues are whether the applicant has assigned sufficient ground for extension of time and, according to trite law whether the application had raised issues of general importance/noble points of law by way of appeal worth to be determined by the Highest fountain of justice. At least the parties are agreed that the impugned judgment and decree were pronounced on 28.12.2020 much as also, the records speak louder that the aggrieved applicant he applied for the copies say a day later ie. on 29.12.2020 and, well within time he lodged a notice of appeal on 04.01.2021. It was very unfortunate that even when on 04.01.2021 accordingly the DLHT registry officer had received the applicant's letter applying for the copies, for no reasons at all it was not clear when exactly the applicant was invited to collect the copies leave alone when the copy was ready for collection and when it was certified as true copy of the original. As fundamental as were all such doubts are cleared in favor of the applicant that the latter was late in the day on 03.02.2021 supplied with the requisite copy of the impugned judgment. There is no wonder late supply of the copies. On this one Dr. Mwaisondola and the 2° respondents took low profile sufficed the point this court to grant one extension of time. With regard to the said 5 points of illegality, I would hold that the 2° respondent's affidavit may have had been sworn two (2) years or so even 4 .

- rule in the case of BBC V. Erick Sikujua Ng'imaryo (supra), the above stated points raised no general importance at all by way of appeal worth determinable by the Court of Appeal of Tanzania much as when determining application for leave powers of this court were not equivalent of rehearing the matters, or in any way whatsoever assume powers of the Highest fountain of justice. Provided that this court shall strictly always not, as for what should and what should not go as appeals reduce itself into a conduit pipe. The devoid of merits application is dismissed with costs. It is so ordered. I S. M. JUL»GE 25.05.2021 The ruling is delivered under my hand and seal of the court in chambers this 31.05.2021 in the absence of the parties. 6

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