

TANZANIA / JUDGMENT

19980430 TZHC Dar es Salaam

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TZHCDECIDED
30 April 1998

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM MISC. CIVIL APPLICATION NO
135/97 D'SAVU/M CITY COMMISSION O O O O O • O O O O O • O O O O O cAPPEIJ.,_i\NT ·
VER,SUS 1\NDREI, NGINDO f s e O O a a O O o O O o O O O O O o. O O O O O O O O O O O
O .RESPOJ\DENT

RULING

Hi\CYJ1.NJ I':. 1 J. This is a.n application for extention of time to file an appeal out of time. It relates to an ex parte decree that was passed against the applicant at an unspecified subordinate court in Dar es Salaam. Only the magistrate has been Bentified. in the supportin~ affidavit. The learned , 'I trial masistrate is a Wambali, Mister or Miss, and the case is an P.M's Court Case No. 100/94 .. The particulars of the trial court appear in the learned counsels's writte~ submission; it is the Court Resident Magistrate at Kisutu. It does not need any empha,,sis to. point ,:mt that the supporting affidavit must contain all important particulars, includin,; the nature of· the claim, the venue and. the trial ma(iistrate. 13e that as it may. It is in the affidavit evidence of Benth Lunyiliko Mandele, a leCTal officer in the employment cf the applicant, that an ~x-parte decree was passed against the applicant on 6th August, 1998. l\,n application to set it aside was filed on 19th May, 1996; it was dismissed on 6th_ May., 1997. The applicant was ac;r::,ried 1)y the 2.atter decision, so registered his intention t0 appeal In that connection, so it is alleged., the applicant applie,:l for copies of th8 judgment and of the proceeding. He did not cet 'them on time; in fact he swears that he has not got them todote. It is the applicant's contention that it has overwhelming chances of success if the prayer it has made succeeds. Andrea Ngidos, the decree-holder, has sworn that the contents of the supporting evidence are falseo In par~icular, he accuses the applicant of 1Jeing negligent when it failed to collect a copy of thG ruling because· it was ready for collection 2nd June, 1997. In his written submissions the applicant's solicifor contends that he could not have lodgecl an appeal in time because in orcler to do so had to have a copy of the decree and. a co""}y of judi;pnent, dqcumcnts which must occumpany the memorandum of appeal 2 in terms of Order XXXIX rule 1 of the Civil Procedure Code. It is therefore ./ contended that the applicant's failure to file the appeal in t.ime was not due to negligenceo At any rate, he arQJ.es, the trial court never informed thern whether a copy of the rulL'lf, and that of the judsment were ready fer collectiono So in the absence of express notification by the wurt of the availability of a copy of the ruling, the applicant had means of getting information wh0ther.such copy of the r~ling was ready for collection. In the view of the

applicant the application should be allowed on another and independent ground. And this is that Civil Case No 100 of 1994 at the trial Court of Resident Magistrate is riddled by fatal irregularities. My examination of the supporting affidavit, and as Mr Maira, learned counsel for the respondent has pointed out, reveals that indeed the applicant was negligent. For instead of calling at the civil registry of the trial court, the applicant just sat back and waited for the trial court to deliver to it a copy of the ruling. No action was taken until the applicant ran out of time within which to appeal. Such conduct no doubt constitutes negligence. In any case, there is indeed no proof that the applicant over wrote to the trial court asking for a copy of the ruling. Here it is so, as learned defence counsel has opined, a copy of such correspondence should have formed part of the supporting affidavit. I am not persuaded that alleged irregularities in the proceedings of trial court per se is a sufficient ground for an application such as this one. If indeed the applicant was minded to pursue them, the first venue was at the time of arising the unsuccessful application the purpose of which was to have the ex parte decree set aside. That was not done and the applicant has only itself or its agents to blame. I therefore find no sufficient cause for the delay in instituting the appeal. Accordingly, the application for extension of time within which to appeal is dismissed with costs. Deliverable to Jo M. Mackanja - JUDGE 30/4/1998

Mro Josam/ Legal Officer: For Applicant Mr. Kimaro In person, /li.clv o : In Respondent I Certify that this is the true copy of the Original 21/7/1998

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