

19980330 TZHC Dar es Salaam

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TZHC

DECIDED
30 March 1998

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISCELLANEOUS CIVIL APPLICATION NO. 62 OF 2014
IN MATTER OF J. B. MIMOMO
VS
APPLICANT BAZIRI ZANI
RESPONDENT RULING) CHIPETA, J.: This is an application for extension of
time to file an appeal out of time against a decision of the Housing Appeals Tribunal and for stay
of execution of the judgment of the said Tribunal. On the order of this court, learned advocates
of the parties filed written

submissions.

In his final submissions, which he based on the applicant's affidavit in support of the application, learned advocate for the applicant has submitted that there was confusion as to the date on which the judgment of the Tribunal was delivered, and so it was not easy for the applicant to give Notice of appeal as well as obtain copies of judgment, proceedings and decree, which he later obtained in the second week of May, 1994. In respect to the prayer for stay of execution, it was submitted that if that prayer is not granted, the applicant stands to lose greatly in that the case involves movable property. In reply, learned counsel for the respondent submitted that if there was confusion as to when the judgment was delivered, it was of the applicant's own making as a result of lack of diligence, negligence, and inaction on his part. Secondly, he submitted that I I J 2 there was nothing which prevented him from filing in the Housing Appeals Tribunal a Notice of his intention to appeal after he had known that the judgment had been delivered. I am, myself, not sure as to when the judgment of the Housing Appeals Tribunal was delivered. This is so because there is the date '11/3/94' endorsed at the bottom of the judgment, and then below that, there is a statement by the Deputy Chairman to the effect that the judgment was delivered in public on 4th March, 1994. Be that as it may, the applicant states that he was within the premises of the Tribunal both on the 4th and 11th of March, 1994. So, if he was not aware of the judgment on either of those dates, he can only have himself to blame. Secondly, in paragraph 7 of his affidavit, the applicant is silent as to when he received a copy of the judgment and decree. I do not know whether that omission was deliberate or is a result of negligence on his part. But that was a very important point to be stated in an affidavit in support of an application of this nature. Thirdly, there is the point made by learned counsel for the respondent: what prevented the applicant from filing a Notice of his intention to appeal in the Tribunal? The applicant is again

silent on that point. From all the contents of the applicant's affidavit, it is quite clear that he has been guilty of negligence, inaction, and lack of diligence on his part with regard to the merits of the intended appeal, I am unable to see any. Indeed, learned counsel appears to concede this, albeit grudgingly. He states:- 'It is not easy to state with certainty that the intended appeal has high chances of success. For these reasons, I hold that the applicant has completely failed to show sufficient cause for his delay. Accordingly, this application fails and so is hereby dismissed. As the suit was filed in forma pauperis, I make no order as to costs. B. D. CHIPETA - JUDGE. Ruling delivered in Chambers this 30th day of March, 1998. B. D. CHIPETA JUDGE 30/3/1998

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