

TANZANIA / JUDGMENT

19710805 TZHC Mwanza

COURT
TZHCDECIDED
5 August 1971

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IN THE HIGH COURT OF TANZANIA AT 7071, WNTZA Appellate Jurisdiction. (Pc' CIVIL APPEAL NO.16 OF 1973. (From the decision of the District Court of Panda District at Panda in Civil Appeal No. 4 of 1970 Before A.M. Sana Esci, P., Original Civil Case No. 9 of 1969 of the Primary Court at Kabunu Before A.B. Kasansa Primary Court "Magistrate.") E.J. Nguinera...

Appellant (Original Defendant) vs. - Faustine Bugingo. / Defendant (Original Plaintiff); I JUDGE EL-KINTDY, J. 971 / The appellant, F.J. Ngui Edwin the Primary Court of Kabungu and judgment was entered against him. He is ordered to pay shs. 368/- with costs to the respondent, Bugingo Faustine. His appeal to the District Court of Panda failed, and he is now appealing to this Court. On the 12th of May 1971, the appellant was served with notice of date of hearing of his appeal, but he did not appear for hearing on the 2nd of August 1971. The respondent who was also served with similar notice on the 24th of April 1971 appeared and argued in support of the District Court judgment. Briefly this suit was heard in the Primary Court on the 26th of June 1970 when the respondent's evidence and that of his two witnesses was taken down and as the appellant, who I was served with a summons, did not appear against him ex parte. A. His main ground of appeal to the District Court was that although he was served with a summons this was not done in sufficient time to enable him to appear during the trial as he was then stationed at some 70 miles away. And his appeal in the District Court

- as also heard in his absence. It is one of his grounds of appeal, in addition to what is stated above, that he was not served with the notice of appeal by the District Court and as such he could not attend his appeal. The District Court record tends to bear him out. Although the notice of date of hearing for 18th of November 1970 was issued by the appellate court on the 21st of October, 1970 it does not show whether it was served on the appellant or not. Even the District Court proceedings did not show whether the appellate court satisfied itself that the appellant was aware of the date fixed for him. The appeal rules are not devoid of difficulty. The Civil Procedure (Appellate Proceedings originating in Primary Courts) Rules, 196, G. 12 of 1964 do not specifically state that the District Court, in its appellate jurisdiction should serve such notice to the parties but such requirement can be gathered from the reading of all the rules. If notices can be issued for adjourned hearing as it can be seen from Rule 12(2) or in the High Court as Rule 11(1) it is difficult to hold that sub-rule (2) of Rule 11 or the District Court is not required to issue notice of date p. 1; -2- hearing for the first date fixed for hearing. If that were so it would be manifestly illogical and contrary to

natural justice. In the circumstances, I am satisfied that the appellant was entitled to be notified of the date of hearing. It could be argued that the appellant was not prejudiced as his grounds of appeal were taken into account when the appellate court considered his appeal in his absence, but this assumes that the appellant would not have added an extra ground of appeal with leave of court as per Rule 15 of the same rules, and in my view this assumption is not justified. As a matter of practice an appellant who has a hearing on a fixed date is normally asked if he wants to speak anything on his petition or add anything, to what he has already stated in his petition. As the appellant did not have this practical opportunity, it cannot be said for certain that his appeal was not prejudiced by his appeal being determined in his absence. The appellant too, under Rule 18 of the same rules, could have applied to the District Court to re-hear his appeal on the ground that he had been denied the opportunity to be heard. I was not duly served with notice. Therefore, taking into account I am satisfied that his complaint against the District Court is valid. The District Court judgment is set aside and is referred back to the District Court for hearing of the appellant's appeal after both parties had been served with notice in sufficient time. The parties should be accordingly informed. The appellant is entitled to his costs on appeal. The costs should be determined by the District Court of competent jurisdiction. Delivered this 5th of August 1971. (Z.N. EL-) JUDGE.

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