

TANZANIA / JUDGMENT

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THE COURT OF APPEAL OF TANZANIA ' AT DAR ES SALAAM CIVIL APPLICATION NO. 27 OF 2001 (CORAM: RAMADHANI, J.A; MUNUO, J. A.; And MSOFFE, J.A) FATUMA BONDEI ;~ ... APPLICANT (ADMINISTRATIX OF THE ESTATE OF THE LATE ULEDIKABUGA) VERSUS HALIMA NASSO RO ... RESPONDENT (Application for Revision of ttte Ruling of the High Court of Tanzania at Dar es Salaam) (Bubeshi, J.) dated the 16th day iof February, 2001 in PC Civil Appeaf'No. 15 of 1992 i RUIJING 12th May & 1st June, 2006. RAMADHANI, J.A.: ·, I

1. . When the application came up for hearing the applicant was present 1 , I ,, ' but the respondent was absent th'ough she was duly served. So, we decided to hear the application ~x parte. We need to preface this 1: ruling in order to appreciate wha_t is at stake and for easiness we i shall use the first names of Fatum~, for the applicant, and Halim 9, for I, the respondent. Halima was the successful plaintiff in Civil Case No. 117 of 1989 at ' I the Buguruni Primary Court, Dar es Salaam, while one Uledi Kabuga was the defendant. Halima claimed that in. 1965 she built the suit premises and then occupied them;! with Uledi, who ,was her paramour I 2 since 1967. Uledi successfully appealed to the District Court of Ilala, Samora Avenue, Dar es Salaam, Civil, Appeal No. 34 of 1991. There was an appeal to the High Court of Tanzania at Dar es Salaam and it appears, as will be seen short_ly, that Uledi was the respondent. though he was dead. On 19th May, 1992, the late RUBAMA, J. agreed with the Primary Court and quash,ed the judgment of the District Court. The late learned judge said: On reading through the record, it is clear that the learned District Magistrate failed to fully appreciate the evidence on record. The record clearly shows that when HALIMA NASSORO and ULEDI KABUGA parted company, ULEDI KABUGA re,mained in the house of HALIMA NASSORO as a tenant. There is nothing unbelievable in this conduct as the District Magistrate had held, the cause of separation between HALIMA NASSORO and ULEDI KABUGA was not detailed by any of the parties - it seems however that it was not violent. The parties had also lived together for a long time. The learned judge also differed from the District Magistrate on the• issue of limitation. There was an application to set as:ide that decision of RUBAMA, J. on the grounds that both the proceedings and the judgment were ex ' parte. That application was dealt with by MAINA, J., who, on 25th August, 1994, had this to say: ... When the appeal came before Rubama, J. on 15 May, 1992, the applicant and the respondent were both present. They each said that they had nothing to 3 say. It is, therefore, not true that the appeal was heard in the applicant's absence, as alleged by the

applicant before this court and in his affidavit in support of the application. I repeat that the appeal was heard in the presence of the applicant on 15 May 1992, and the judgment was reserved till 19 May, 1992 when it was delivered, again in the presence of the applicant and the respondent. The record is very clear on that. There is, therefore, no basis to set aside the judgment. That was not the end of the matter. There was another application before the High Court for leave for extension of time within which to apply for leave to appeal to the Court of Appeal from the judgment of RUBAMA, J. That application was before BUBESHI, J. and was very protracted from 18 August, 1998 to 16th December, 2001, that is a period of three years, four months and some eight days or so. On 8th August, 1998 when the matter first went to BUBESHI, J., Mr. Kanabar, learned advocate, appeared for the applicant, that is, Uledi, and he told the Court that Uledi was dead since December, 1992. That does not appear to be correct. We say so, because RUBAMA, J. in his judgment of 19th May, 1992, said: ULEDI KABUGA died before the determination of the appeal by the District Court of Ilala District. That court allowed the appeal hence this present appeal by HALIMA NASSORO. So, Uledi could not have died in December, 1992 after RUBAMA, J's judgment of May, 1992. 4 I BUBESHI, J., therefore, stayed the application to enable Mr. Kanabar ' to rectify the record and to re-file the chamber application. After four more mentions, on 5th November; 1999, BUBESHI, J. recorded "Informed that the wife of Respondent has the letters grant of admission. The letters seen and filed as appropriate." But on that ' date Mr. Kanabar was not prepared to proceed- and asked for an adjournment. Then there were three other mentions in which the respondent was absent and it was said that she avoided summons. I ' nd On 22 September, 2000, Mr. Kanabar asked for summons by way of publications in UHURU and MAJARA. It would appear that the applicant did not pay for the publications. So, on 3rd November, 2000, ' a last adjournment was granted and publication was done in UHURU of 30th November, 2000. Three more adjournments went by and none of the parties were present. ,Finally, 16th December, 2001, Mr. Kanabar, asked for an adjournment because he was "not ready to argue the appeal [sic]". BUBESHI, J. gave the following order: Application is dismissed, counsel is not prepared to argue the application he has filed himself, despite having being given all the time to submit his arguments. This application is to revise that ruling of BUBESHI, J. There is no iota of reason to fault the learned judge. The learned judge went out a long way to accommodate the applicant as we have endeavored to demonstrate above. Mr. Kanabar for the applicant was not serious at all. In fact he demonstrated the same attitude before us. He was in Court when we heard this application though not as an advocate. But when we could not follow Fatuma herself we asked him if he could assist as amicus curiae. He told us that he had difficulties of hearing. We wondered why he could not have presented written submissions especially as he was the advocate before BUBESHI, J. and in fact the application was thrown out because he was idle. We could not understand why he was in Court at all and seated next to Fatuma. Apart from that reason, we cannot entertain this application for three other reasons. One, there was the wrong information given by Mr. Kanabar to BUBESHI, J. regarding the death of Uledi as we have already said above. To deal with the application is to be a party to that misinformation. But worse, there must have been someone who misled the High Court by pretending to be Uledi. The

proceedings of 15th May, 1992 before RUBAMA, J., for example were as follows: 15/5/92 Coram - Rubama, J. For the Appellant - present For the Respondent - present CC.Chuma App. I have nothing more to add. Respondent I have nothing more to add. Court - Judgment on 19/5/92. YAHYA RUBAMA, J 15/5/92 We do not know when or how RUBAMA, J. came to know that Uledi died before the judgment of the District Court. But it is glaringly 6 ' certain to us that someone appeared before the learned judge as „ Uledi or a legal representative of Uledi. The same is the case before MAINA; J. according to the record, for instance: 22/7/94 Coram - Maina, J Appellant - Uledi Kabuga present Respondent - Halima Nassoro ~bsent not served Order - Hearing of the application I is adjourned to 27/7/94 The respondent - Halima Nassbro to be notified. 11 , W. J. ~AINA, J.,1 2717/94 11/8/94 Coram - Maina, J Applicant present Respondent absent duly serveo by substituted service. Order - Since the responden:~ was served and she is absent, the hearing proceeds in her at>sence. Applicant - The house belong\$ to me ... It is obvious that someone presented himself as Uledi. Admittedly, it beats us why MAINA, J., if he had read the judgme~t of RUBAMA, J., was so tricked. But the truth is that he was. 1 But apart from the foregoing, the qpplication before BUBESHI, J. was misconceived. Since the matter ha~ started in the Primary Court then the application should have been for extension of time within which „, to apply for a certificate on point of law and not for 'leave to appeal. 7 We are of the decided view that there is nothing to revise in the I proceedings before BUBESHI, J. Th~re was nothing she could have I, ' done than to dismiss the application which had been in court, as " already said, for over three years and yet Mr. Kanabar was not in a position to present his case when caUed upon to do so but asked for I an adjournment. In any case, as alr~ady explained above, BUBESHI, J. ought to have dismissed it as inc~mpetent even i{ she ha heard it as the application ought to have been for extensioril of time within which to apply for a certificate on ~oint of law and not for leave to appeal. The application is dismissed. DATED in DAR ES SALAAM, this 1st ~ay of June, 2006. A. S. L. RAMADHANI i JUSTICE OF APPEAL E. N. M'UNUO JUSTICE dF APPEAL J. H. MSOFFE " JUSTICE OF APPEAL I certify that this is a true copy of the original.

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