

TANZANIA / JUDGMENT

19880621 TZCA Dar es Salaam

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.... • ,..q.. ,/ .• '1..4) , ., IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM
(COR11.N; MUSTAFA 9 J .A. 2 NAKAMF~~~ And Or1Ax'1 2 J .A.) CIVIL APPEAL NO. 45 OF 1987
KISBNA CO3TANTINJ~ HUJ3I. • APPELLANT VEHSV,3

1. HUNNINGTON MFAUIVIE ~
2. THE AT'.PORNEY GJ~NERAL ~ • • R11SPONDEJIITS (Appe~l from the judgment of the Hi.eh Court of Tanzania at Tabora) (Chua, J.) dated the 8th day of August, 1987 in High Court ;;;...:lection Petition No. 1 of 1985

RULING

r•,m3Tii.FA __ .J .AO ;'!..;2.._ ~ ~ir. Alimwike h2is applied that the appeal be struck out as the appellant has contravened the provisions of Rule 83 of the Court of Appeal Rules. The notice of appeal was filed on 2.11.06 and the memorandum and record of appeal was filed about 11 months later •. No certificate from the Registrar of the High Court excluding time needed for the preparation and delivery of the record to the appellant was applied for or issued. The appellant was to have filed the record of appeal within 60 days of the filing of the notice of appeal, unless the time for the prGparation of the record. of appeal was excluded by a proper certificate from the Registrar. The appellant has contravened the provisions of Rule 83 (1) and (2). In terms of the provisions of Rule 84 the appellant has not instituted his appeal within the appointed time and. the appeDl shall be deemed withdrawn. The appeal is struck out. Costs of the appeGl to the respondents. DATED at DAR ES SALAAM this 21st day of June, 1988. •••eoeo•/2. .. 2 A. NUS'TAFA JDS.TICE OF APP.EAL L. M. MAKAME JtJ'S TI CE OF .AP PEAL A. M.A. OMAR JUSTICE OF APIJtAL I certify that this is a true copy of the original. \.. f _/ V .. l/ 4 ,,,,1_ '1..~ c. ,f! (J • H• JI • FF£) . . SENIOR DEPUTY mraSTRJ\R. . . . I / IN THE COURT OF APPEAL OF T.ANZ1\NIA AT DAR ES SALAAM \ (coJ~h~ ~ MUSTAFA, .A• l-'lAKJ11'JE? .A• , And OMAR J t 'J 2 J .A,J_ / CIVIL APPEAL NO. 45 OF 1987. (KISENA: COSTA. NTINE RUBI. •••• APPELLANT VEFSUS

1. HUNNINGTON MFAUME A 2.\. THE ATTOffiliY GENERAL ij • • • RESPONDENTS (Ap~eal from the judgment of the H~h Court of Tanzania at Tabora) (Chua, J.) dated the 8th day of August, 1987 in High Court Election Petition No. 1 of 1985_

RULING

Mr. Kwikima for the appellant, by notice of motion has applied for leave for fresh evidence to be adduced on the ground that such evidence was not available at the trial. In the first place, Mr. Kwikima filed his notice of motion on 10.6.88. The advocates for the 1st and second respondents were in effect served only this morning, i.e. on 21.6.1988. . Y.ir. Kwikima has submitted that in fact the 1st respondent had been served on 18.6.88 but conceded that the 2nd respondent was only served this morning. We are satisfied, after hearing Mr. ilimwike and Mr. Cilenge, that both the respondents had been properly served only this morning. The respondents had given their addresses for service ~ so there was no issue as to uncertainty. The appellant had failed to comply with the provisions of Rule 52 (1) Court of Appeal Rules. secondly we are by no means satisfied that the evidence sought to be adduced was not available at the trial ~ if due diligence on the part of the appellant had been applied to obtain it. Mr. Ntungwa /2 f r

- 2 - a witness the appellant wished to call, has deferred to that he knew of the election petition at or before the time of trial. He had been available all time if his evidence was needed but apparently nobody had approached him for assistance until apparently sometime this month. For both these reasons we reject the application. DATED at DJIR ES SALAAM this 21st day of June 9 1988. A. MUSTAFA JUSTICE OF APPEAL L. M. fUtkAME

JUSTICE OF APPEAL A. M~ A. OMAR JUSTICE OF APPEAL I certify that this is a true copy of the original. ;,;C/;# (Jr. ;1. ~O~E) SENIOR DEPUTY REGISTRAR

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