

TANZANIA / JUDGMENT

19980508 TZHC Dar es Salaam

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TZHCDECIDED
8 May 1998

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RULING

Mackanja, J. This an application for leave to extend time within which to file an application for revision of the ruling of the Resident Magistrates Court at Kisumu dated 29th March, 1996 in Employment Cause No. 131 of 1994. The application is supported by the affidavit of Lawrence Massawe, the applicant. The application has not been opposed. Mso H. Bayona, learned advocate, has argued the application on behalf of the applicant. She has backed up her written submissions by a number of decided cases. She has pointed out five errors on the record of the lower court in respect of which she invites me to allow the application. The issue is whether the applicant has a sufficient cause for the delay in lodging this application. Three causes have been put forward. The first cause for the delay is based on a joint of law, namely, section 21(2) of the Law of Limitation Act, 1971 which provides: - " (2) In computing the period of limitation prescribed for any suit the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief shall be excluded where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other causes of a like nature, is unable to entertain it." Ms. Bayona submits that there are undisputed facts in the affidavit evidence to the effect that the applicant had previously preferred an appeal against the same ruling which was between the same parties in Civil Appeal No. 65 of 1996. The appeal was dismissed on a preliminary objection on 29th March, 1996. So if the period within which the applicant filed the appeal, that is from 8th May, 1996 to 20th March, 1997 is excluded, the instant application having been filed on 3rd April, 1997 would be in time. In principle, I say so because reading the law on which she relies, certain pre-conditions must be satisfied first before an application such as this can succeed. It must be shown that proceedings were not intended to be reviewed failed for defect of jurisdiction or like cause, and, in connection, failure of a civil proceeding on the ground that it is misconceived or premature will not afford any ground for the application of section 14(2) of the Law of Limitation Act to a subsequent civil proceeding regarding the same issue. And, as it is apparent from the legislation, these provisions relate to the original jurisdiction of courts. What is the situation in the instant case? A ruling was to be delivered by Mrs. William, a Resident Magistrate, on 4th December, 1995. For some reason Mrs. William was

not to be available so the case was re-assigned to Mr. Kiwango, another Resident Magistrate. It is alleged that instead of delivering a ruling in respect of the applicant's application for stay of execution of a decree Mr. Kiwango went ahead to set aside the decree that had been passed in favour of the applicant. This course of action that was taken at the motion of the trial court aggrieved the applicant who believed that Mr. Kiwango had no jurisdiction to set aside the ex parte decree as in doing so he was acting in an appellate capacity over another magistrate of concurrent jurisdiction. The applicant was of the view that he had a right of appeal against the order that was made by Mr. Kiwango. He appealed but the appeal was dismissed by Mr. Aoro Manento, Principal Resident Magistrate, exercising extended jurisdiction. The application before me is for extension of time within which to file an application for revision of the order by which the appeal was dismissed by Mr. Manento. The applicant contended that the order that was made by Mr. Manento is revisable because it appears, the appeal was incompetent, the right cause of action was to strike it not dismiss it. I agree that an appeal will only be dismissed if it is determined on the merits. If the appellate court finds that the appeal is premature or that it is incompetent from some other causes the proper course of action is to strike it out. If Mr. Manento erred in dismissing the appeal instead of striking it, has this court jurisdiction to revise the proceedings of a Principal Resident Magistrate who decided the matter in the exercise of extended jurisdiction? The High Court has revisional jurisdiction over decisions of subordinate courts in terms of sections 25 to 32 of the Magistrates, Courts Act, 1994 as relates to proceedings originating from primary courts and sections 43 and 44 of the said Act relates to proceedings originating from District Courts and courts of Resident Magistrate. I do not think these proceedings have been brought under section 440. These provisions do not relate to powers exercisable by Resident Magistrates with extended jurisdiction. This is so because section 45 (1) of the Magistrates Courts Act provides that when exercising extended jurisdiction a resident Magistrate:-

- shall be deemed to be a judge of the High Court, and the court presided over him while exercising such jurisdiction shall be deemed to be the High Court. Obviously, section 44 of the said Act does not apply to decisions of the High Court. On the same parity, this piece of legislation does not apply to decisions made by a resident magistrate exercising extended jurisdiction. Where, therefore a party is aggrieved by the decision of a Resident Magistrate exercising extended jurisdiction has to appeal to the Court of Appeal. If he will wish to have the matter revised he has no alternative but to lodge his application in that behalf to the Court of Appeal. In fine, this Court holds neither appellate nor revisional jurisdiction over decisions made by resident magistrates exercising extended jurisdiction. This point alone, then disposes of this application. I consider it unnecessary to delve into whether there are irregularities complained because the only Court with jurisdiction to entertain such complaints will be the Court of Appeal. It is in that connection that this application would fail. Application dismissed. There will be no order as to costs. Delivered. J. M. Hackanja JUDGE --- Mse Bayona, Advocate: For the Applicant Mr. Kisusi 7 Advocate: For the Respondent. I Certify that this is a true copy of the Original ..
- 8/5/1998

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Prepared on 23 October 2026 · Esheria