

TANZANIA / JUDGMENT

maneno ntacho vs the regional agriculture and livestock and another 2020 tzhc 207 28 february 2020

COURT
TZHCDECIDED
28 February 2020

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IN THE HIGH COURT OF TANZANIA AT TABORA MISC. CIVIL APPLICATION NO. 68 OF 2018
(Arising from Civil Case No. 5 of 2000 of the High Court of Tanzania at Tabora) MANENO
NTACHO..... APPLICANT VERSUS THE REGIONAL AGRICULTURE
AND LIVESTOCK - 1st RESPONDENT THE ATTORNEY GENERAL..... 2nd
RESPONDENT RULLING 21/02/2020 & 28/02/2020 BONGOLE J. The applicant MANENO NTACHO
instituted this application seeking for orders that:-

1. The High Court of Tanzania at Tabora be pleased to extend the prescribed time for lodging a Notice of Appeal.
2. That costs of and incidental to this application be provided for
3. Any other or further orders as deemed fit and just by the Honorable Court. This application is brought under section 11 (1) of the Appellate jurisdiction Act [CAP 141 R.E 2002] and Rule 83 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 supported by an affidavit deposed by Masendeka Anania Ndayanse advocate for the applicant. The grounds as raised in the affidavit upon which extension of time is sought run as follows:-
 1. That the judgment in Civil case No. 5 of 2000 was delivered by the High Court of Tanzania at Tabora in the absence of the Applicant by honorable H.T. Songoro 3 . on 11th day of December, 2013.
 2. That aggrieved by and dissatisfied with the said judgment, the applicant who had not intended to appeal to the Court of Appeal of Tanzania unsuccessfully applied for correction of errors in the said judgment in Miscellaneous Civil Application No. 52/2013 and on 18/02/2016 the High Court ordered, in the absence of the Applicant, among other things, that the remedy available for the Applicant is to appeal to the Court of Appeal of Tanzania.

3. That thereafter on 16/03/2016 the applicant applied for the correction of errors in the decree in Civil Case No. 5 of 2000 but still the correction made which is reflected in the second copy of the decree did not accommodate repatriation expenses of shillings six hundred thousand only (600,000) as on 22/06/2016 the trial High Court of Tanzania kept on issuing to the applicant a decree which consists of the same defects.
4. That consequently the applicant kept on insisting orally that the applicant out to be issued with a decree before he can proceed to the court of Appeal of Tanzania or otherwise and in the meanwhile the prescribed time for lodging a notice of appeal run out. 2
5. That thereafter, he filed Msc. Civil Application No. 22/2017 but the same was struck out on technical grounds.
6. That the delay in lodging a notice of appeal is attributed to the Court's issuance of an invalid decree, its failure to neither correct the same nor informing the applicant that it wasn't interested or prepared to correct the decree, otherwise known as technical delay and the illegality of the decree to be appealed against which among other defects limits to the substance expenses to 56 months instead to the repatriated to his place of recruitment which amount to good cause for the delay and for extension of time for lodging a notice of appeal. It is on the above grounds the applicant prays this court to grant him extension of time to file notice of appeal. During hearing the learned advocate Mr. Ndayanse appeared for the applicant while the learned State attorney Mr. Iddi Mgeni appeared for the 1st and 2nd Respondents. With the permission of the court, parties filed written submission in disposing this application. Mr. Ndayanse submitted that two sets of decrees were extracted from one judgment on 11/12/2013 and 21/01/2014 and each of the decrees lacks one relief namely the applicant's repatriation costs which appears on one part of the judgment and subsistence expenses of Tsh. 14,089.50 per month is limited to 56 months only from 01/09/1995 to 30/05/2005 instead of extending it to the date when the applicant will be finally repatriated back to his place of domicile. 3 That due to technical delay revealed by the affidavit and the illegality of the decrees revealed he submitted that sufficient reason for the delay in lodging notice of appeal has been advanced and he prayed the application be granted with costs to the applicant. In reply the respondent's attorney submitted that, it's a cardinal law that anyone who is late to do anything, must explain what hindered him to be on time. That in this matter the applicant was required to explain and account for his delay. He quoted Rule 10 of the Court of Appeal Rules, 2009 which sets a requirement to show good cause. That, extension of time by the applicant is not an automatic right, the court has to consider reasons advanced by the applicant for his delay. The applicant failed to show good cause which hindered him to lodge notice of Appeal on time because he was in court on the day of judgment so he was aware of what transpired therein, the applicant has shown how he was negligent to prosecute his case by sleeping on his rights. Further that, in the applicant's affidavit, he did not find any line advancing good cause for his delay thus the applicant failed to account for his delay for the days which he failed to approach the doors of the court. I set an eagle eye on the judgment of the High Court which was delivered on

11/12/2013 the first page the honorable judge quoted the applicant's claims as reflected in the plaint. I also quote:-

- (i) Severance allowance o f Tshs 40,942.65 (ii) Repatriation allowance of Shs 600,000 (iii) Subsistence allowance for 5 years from the date o f termination of the plaintiff to the date he filled the suit shs 9,459,200/= From the quoted claims above, among other things the applicant claimed Repatriation allowance to the tune of Tsh. 600,000/= and the honorable judge at page 10 of the same judgment awarded the applicant as follows, I quote "Thus the court has take (sic) into account that, since 1995 when the plaintiff was terminated a (sic) lodged a claimed shs 600,000/= there has been increase o f fare and freight costs. For that reasons the court find, the claim amount Shs 600,000/= is fair and suffice to repatriate the plaintiff and his luggage from Tabora to Mulumba Kigoma. The court therefore grants the plaintiff a sum o f shs 600,000/= as his repatriation costs for the plaintiff and his luggages. " To what I call a bad luck the prayers that was granted by the court never reflected into the decree extracted from the judgment, the error was caused by the court itself. The applicant tried several times to convince this court to rectify the decree but in vain. Now he has come to this court for a prayer that he be allowed to lodge notice of appeal out of prescribed time so that he can appeal to the court of appeal out of time. I am convinced that, that single reason suffices a grant and this being the court of record it is a most obvious fact that the error to be rectified so that the records of the court be kept clear and certain. As for the second ground advanced by the learned counsel on subsistence allowance granted by this court to the tune of 56 months instead of whole period from termination to the time he gets repatriated I decide that, that ground can be discussed on appeal not in this application. 5 Having said that, I grant the application. The applicant is hereby granted ten (10) days within which to file notice of appeal from the date of this order. Costs of this application shall abide by the outcome of the intended appeal. 28/ 02/2020 Ruling delivered under my hand and seal of the court in chambers, this 28/02/2020 in the presence of the Applicant in person and in the absence of the Respondents. JUDGE 28/ 02/2020 6

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