

TANZANIA / JUDGMENT

michael kisamya vs tendelwa mwebeya

2021 tzhc 2183 26 february 2021

COURT
TZHCDECIDED
26 February 2021

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IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY AT MWANZA MISC. CRIMINAL APPLICATION NO. 48 OF 2020 (Arising from the Ruling of the High Court of Tanzania at Mwanza (Hon. J.C. Tinganga, Judge) dated 6 May 2020, in Misc. Criminal Application No. 98 of 2019 emanating from Magu District Court Criminal Appeal No. 13 of 2019 Originating from Nyangunge Primary Court Criminal Case No. 384 of 2018) MICHAEL KISAMYA APPLICANT VERSUS TENDELWA MWEBEYA RESPONDENT

RULING

10^o & 26 February, 2021 RUMANYIKA, J.: The application is for extension of time within which, with respect to decision of 06/05/2020 of this court (Tiganga, J) refusing Michael Kisamya (the applicant) extension of time to apply for leave to appeal to the Court of Appeal of Tanzania. It is brought under Sections 11(1) and 5(1) (c) of the Appellate Jurisdiction Act Chapter 141 RE 2019 and Rule 44(1) (a)(b)

- (2) of the Court of Appeal Rules, 2009. It is supported by affidavit of Michael Kisamya whose contents the applicant essentially adopted during the hearing. 1 The applicant submitted that he was, on a date he did not remember but late in the day supplied with copy of the impugned ruling which again had been delivered in his absence. That is it. The respondent submitted that the application lacked merits because the impugned decision was delivered to both of them online last year during the first wave of the COVID - 19 pandemic and upon losing the matter he cried. The applicant lodged the instant application only six (6) months later and at the execution stage. The respondent further contended. That is all. The issue is whether the applicant has assigned any sufficient grounds for extension of time. The answer is no. One may have late in the day supplied with copy of the impugned decision yes, but he was not forced to much as the records would clearly show that like in other cases the parties were in 2020 during the pt wave of Covid-19 heard through digital platform wherein both of them were duly notified about date of ruling. The issue of late supply of the copy therefore it cannot arise here. After all if the issue is that of the parties having had been heard, there was his supporting affidavit whose contents (paragraphs 4 and 2 refer) also, in his decision judge considered. It is settled law that court records are 2 e .A ' serious documents as they tell what actually had transpired in court such that the same cannot be impeached lightly.

Even for the sake of assumption the applicant was not notified and therefore he did not appear and heard, yet he shouldn't have just like that abandoned his application. In other words if that is the case there is no wonder before me there is the present application. The application is dismissed. Right of appeal explained. S. M. 16/02/2020 The ruling is delivered under my hand and seal of the court in chambers this 26/02/2021 in the absen e of the parties. U1ANY IKA DGE 26/02/2021 3

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