

TANZANIA / JUDGMENT

musa mpanduje vs jacob mashauri kitenge 2019 tzhc 2068 24 january 2019

COURT
TZHCDECIDED
24 January 2019

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IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY AT MWANZA MISCELANEOUS
LAND CASE APPEAL NO 82 OF 2018 (From The Decision Of The District Land And Housing
Tribunal Of Mwanza In Land Case Appeal No 96 Of 2017 And Original Ward Tribunal Of Kitangii
Ward In Application No 16 Of 2015) MUSA MPANDUJE..... APPELLANT VERSUS
JACOB MASHAURI KITENGE..... RESPONDENT

JUDGMENT

28/11/2018 & 24/1/2019 Matupa, J. Before the District Land and Housing Tribunal of Mwanza, the appellant moved the court for an application for extension of time within which to file his appeal. The application there was taken by way of an affidavit under section 20 (2) of the Land Disputes Courts Act no 2 of 2002. The application was supported by an affidavit of the applicant. In his i affidavit, the applicant averred that the parties were engrossed in a land dispute before Kitangiri ward tribunal. Upon hearing of the application at the tribunal, the decision of the tribunal was reserved and it was to be delivered on notice to be supplied by way of a summons. The summons was never given and the next thing was that the notification of execution of the decision of the tribunal, which was affixed on the premises, the subject of the dispute. The applicant contends that he had followed for the decision of the case for two years in vein, only to be told that the case was decided by the tribunal and that it was a subject of execution. The respondent contended in his countered the applicant's contention in that, the application lacked evidence of failure to serve notice; presumably the evidence would be availed from the affidavit of the secretary of the tribunal. The respondent seemed to suggest in paragraph 7 of his affidavit that, the decision was rendered on 14th of July, 2015 and the applicant did not take steps to appeal for two years, up to 22nd day of July, 2017. 2 The simple question here, which the respondent does not heartily dispute in his counter affidavit is whether, there was notice of the date of judgment upon the close of the hearing, or at all, of which the applicant had the notice of the date of hearing was closed. Indeed Mr. Adam Robert, the learned counsel for the respondent, readily conceded that, it is true that going by the proceedings, the date of judgment is not apparent upon the close of the proceedings. This ground alone bears out the claim by the applicant. The learned counsel further conceded that, in the absence of the date of the judgment in the proceedings, could only be supplied by a summons of the date of judgment, which is also not there. Despite this glaring

missing of the date of judgment, the Chairperson of the district land and housing tribunal declined the application for the extension of time. In making his decision the tribunal chairperson gave the following reasons:- "The only reason of the applicant is that, he was not informed on the date of judgment because the Ward Tribunal Secretary told him that he will call him. Now the question is did the applicant made (sic) any due diligence to make sure that what he was told by the ward tribunal's secretary was correct?" 3 The learned Chairperson seemed to accept the claim by the appellant that probably the Secretary of the tribunal told him that the summons was not there. The issue is whether, with their presentation by the secretary, there was anything more the applicant could do to ascertain that the judgment was not ready. The answer to the issue is definitely in the negative. The comment by the learned chairman that the applicant had a duty to do due diligence is therefore misplaced to put it in the least. I myself, have revisited the proceedings of the trial tribunal. The endorsement at the end of it shows that it was made on the 2nd of June. While the hand written version does not indicate the year, the type written version shows that it was written in the year 2018. The endorsement in the handwritten version is to the effect that "tumefunga ushahidi tarehe 2/6/ ndipo watakapoleta taara" whatever that means. On the other hand, the typewritten version shows that "tumefunga ushahidi tarehe 2/06/2018 ndipo watalipa". versions are vague and incomprehensible. Clearly, these endorsements have nothing to do with notification to the parties of the date of decision. The learned counsel for the respondent was therefore correct when he conceded that at the close of the proceedings, the parties were in the dark as to the date of judgment. In the light of the quietness on the date of judgment, clearly, the learned Chairman of the tribunal had no justification for demanding the applicant to conduct due diligence on the existence of the judgment, after he was told that there was none. There is more. On the 14th of July, 2015 when the judgment was apparently made, and on this it will be recalled that it is not clear from the hand written proceedings when were the proceedings closed, it is not indicated that parties were present. There is a position of the Court of Appeal that, where a party is not aware of the date of judgment and could not be aware of it that is good ground for the extension of time. In this case, there is every indication that the trial tribunal did not afford the applicant of the date of judgment Paradoxically, the respondent concedes that much, and he adds that, even on the day of hearing of the execution proceedings they could not serve him because he was not available, but they were able to serve him by affixation, the order for the execution itself. One wonders how a person who is subject of eviction cannot be available for service at the time of hearing of the proceedings, which gives the order for the eviction. 5 I am satisfied that the applicant was not aware of the date of judgment, as well as the hearing of the execution proceedings. He was therefore entitled to the extension of time he prayed for at the first appellate tribunal below. The appeal is hereby allowed. I will therefore order that, the appellant shall file his appeal in accordance with the law, within forty-five day days from today. The appellant shall have costs of this appeal. 6 Date: 24.1.2019 Coram: Hon. Matupa, J Appellant: present in person Respondent: present in person B/c: I. Isangi Court: The ruling was delivered in chambers in the presence of the parties this 24th day of January, 2019. 7

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