

TANZANIA / JUDGMENT

Paulini Sumuni vs Mashauri Sangija

2007 TZHC 183 12 October 2007

COURT
TZHCDECIDED
12 October 2007

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY AT
MWANZA MISC. PC. CIVIL APPLICATION NO. 29 OF 2006 {Arising from Magu D/Court Civii
Appeal No. 110/2003} (Original Civil Case No. 71/2002 Kisesa FJprimary Court) PAULINI
SUMUNI.....APPLICANT Versus MASHAURI SANGIJA..... RESPONDENT

RULING

18th Sept. 8th to 12th Oct. 2007 SUMARI. J. This is an application for leave to appeal out of time. The intended appeal is against the decision of the District court of Magu in civil appeal no: 11 of 2003 which originated from civil case no: 71 of 2002 in Kisesa primary court. * In his affidavit to support his application, applicant deposed that he immediately filed his notice of intention to appeal the same day and this is as per the letter dated 15/4/2004 (annexture 'A'). That the copy of judgment was supplied to him on 22/6/2004 and he purchased it the same day through E.R.V. 18148397 (annexture 'B?'). On the following date he filed his memorandum of appeal at Magu district court through E.R.V. 18147953 (annexture 'C') And his appeal was registered as P.C. Appeal No: 164/2004 and when placed before his Lordship Mackanja, J it appears that the appeal was out of time (annexture 'D'/Judgment/Ruling). It is the applicants contention that failure to lodge the appeal in time was not purposely made by him but was out of his powers due to delays caused by the district court for the reasons of shortage of stationary. When this application was called for hearing the applicant told this court that he was not late to lodge his appeal so he requested his grounds stated in his affidavit be considered and his application be granted. He further stressed that he filed his notice of intention to appeal the same day. In his clear words he said he requested for the proceedings and judgment the same day and that he paid for the copies in two days time, meaning on 17/4/2004. In his reply the respondent told this court that he fails to understand the applicant as they have agreed to pay each other. He further submitted that the applicant's application lacks merits as no reasons have been advanced for the delays. * I fully agree with the respondent that no sufficient reasons have been advanced by the applicant for his delays to appeal in time. The applicant told this court that he paid for copies within two days after the judgment i.e. 17/4/2004. This assertion contradicts the facts contained in ground 7 of his affidavit which states that he purchased the copy of judgment on 22/6/2004 through E.R.V. 18148397 (annexture 'B'). As if those contradictions are not enough, when [] was trying to

compute the period by reading carefully the sdiid E.R.V.annextures, I i discovered great unusual entries which do ijiot tally and as such i creates a great doubt on what has deponed by the applicant. This is very strange and let's sees what it is. While ground 7 of the applicant's affidavit speaks of E.R.V. 18148397 dated 22/6/2004 as a receipt to purchase a copy of proceedings and judgment, ground 8 of the same affidavit states that on 23/6/2004 applicant filed his memorandum of appeal at Magu district court through E.R.V. 18147953. These two E.R.V receipts definitely leave much to be desired. Why? In normal circumstances E.R.V. receipt 18147953 would have been issued before E.R.V receipt 18148397. This clearly indicates that there were fishy game played by the applicant and the issuing officer of the E.R.V. receipts. This is a dirty game I must say and the judicial authority concerned has to take action to deter this condemned habit. Taking into consideration this anomaly together with the facts stated by the applicant before me in court that he paid for the copies on 17/4/2004 just two days after judgment delivered, I am unable to believe what has been deponed by the applicant in his affidavit. His contradictions are nothing but direct evidence of his lies before this court. As such there is no way this application can succeed. The application is therefore dismissed with costs. A.N. Judge | ^Delivered in presence of the respondent Mashauri Sangija. At Mwanza 12/ 10/2007 3

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