

TANZANIA / JUDGMENT

yassin mohamed ali abdallah vs saidi mohamed ali nangumbi 2008 TZHC 40 13 May 2008

COURT
TZHCDECIDED
13 May 2008

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IN THE HIGH COURT OF TANZANIA AT MTWARA CIVIL APPEAL NO. 7 OF 2007 LINDI DISTRICT COURT EMPLOYMENT CAUSE NO. 1 OF 2006 YASSIN MOHAMED ALI ABD ALAH A PP
ELLANT VERSUS SAIDI MOHAMED ALI NANGUMBI RESPONDENT Date of last order -
13/3/2008 Date of Judgment - 13/5/2008

JUDGMENT

MJEMMAS, J. The appellant - Yassin Mohamed Ali Abdallah was sued by the respondent - Saidi Mohamed Ali Nangumbi before Lindi District Court in Employment Cause No.1 of 2006 for recovery of TShs.2,800,000/= being the value of a shop or salaries, overtime and leave for a period of five years in which the respondent worked for him (appellant) The district court entered judgment in favour of the respondent. The appellant was aggrieved by that judgment hence the present appeal At the hearing of this appeal both parties were unrepresented and they appeared in person. Upon perusal of the documents filed by the parties I realized that they were not properly titled so I gave them leave to amend the documents to read "Memorandum of Appeal" and "Reply to Memorandum of Appeal" respectively. As stated earlier, the parties were not represented by advocates so they could not address some serious irregularities which I found in the proceedings and judgment of the district court. I will therefore proceed to deal with those irregularities because in my humble opinion they are fatal and may result into annulment of the proceedings. The record of the proceedings shows the following: Date: 19/6/2006 Coram: C.P. Semwija, RM Parties: All present CC: J. Nahumba, R.A Plaintiff: I have no more to add to my written statement. Plaintiff: [should read Defendant] I have nothing to add out of my written statement of defence Court: Judgment on 4/7/2006. Sgd: C.P. Semwija, RM 19/6/2006 Date: 4/7/2007 Coram: C.P. Semwija, RM CC: J. Nahumba, R.A Order: The fees have not been paid. First the fees should be paid and the judgment will be delivered. Mention on 18/7/2006. Sgd: RM Date: 18/7/2006 Coram: C.P. Semwija, RM Parties: Plaintiff - Present Defendant - Present Defendant: I was paying the plaintiff TShs.30,000/= each month. Plaintiff: I have said in my written statement. He have not paid me Court: Fees have been paid. Sgd: C.P. Semwija, RM The trial Magistrate proceeded to write his judgment which reads in part, I quote: JUDGMENT In this case one

Saidi Mohamed Nangumbi claims from the defendant Tsh.2,800,000/= as salaries from the defendant, salaries from 4/8/2001 to 14/1/2006, and the respondent denied the liability. Issues agreed by both parties are:

1. Whether the plaintiff had been an employee of the defendant.
2. Whether the plaintiff had been duly terminated by the defendant.
3. Whether the plaintiff is entitled to payment of the claimed sum?
4. Whether any other relief may be granted by the court. The trial magistrate went on to analyse the issues above using statements and documents referred to in the pleadings i.e. plaint and written statement of defence. He finally gave judgment in favour of the plaintiff. From what I have shown above it is clear that the issues were not drafted and made clear to the parties before writing of the judgment. It is also clear that the parties did not adduce any evidence to prove or disprove the claims/issues in dispute. Order XIV rule 1 (5) of the Civil Procedure Code, provides: "At the first hearing of the suit the court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material proposition of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. Under this order XIV rule 1(5) it is the duty of the court to frame issues and in the present matter I take it that the court did frame the issues though they are only reflected in the judgment. The issue which arises is, where did the trial magistrate get the evidence to resolve the issues as he did? Order XV rule 3 provides that: Order XV r.3(1) "Where the parties are at issue on some question of law or fact, and issues have been framed by the court as hereinbefore provided, if the court is satisfied that no further argument or evidence than the parties at once adduce is required upon such issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly. Order XV r.3(2) "Where the finding is not sufficient for the decision, the court shall postpone the further hearing of the suit and shall fix a day for the production of such further evidence or for such further argument as the case requires." From the record of the proceedings of the case, and as it has been shown hereinbefore, neither the plaintiff nor the defendant adduced any evidence which could have assisted the trial magistrate to determine the issues he had framed. He cannot, therefore, be said to have acted under Order XV r.3(1) when he delivered the judgment on this matter. I therefore find that the irregularity which was committed by the trial magistrate is fatal and it has caused miscarriage of justice. The proceedings and decision of the trial court are thereafter quashed. It is ordered that this case be tried afresh by a different Magistrate. Each party to bear its own costs. *judgment*, Ordered accordingly.

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