

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**IN THE DISTRICT REGISTRY
AT MWANZA**

PC.CIVIL APP. NO.88 OF 2005

***(Arising from Mwanza District Court Misc.Civ.Appl.No.21/2004,
originating from Mwanza Urban, P/Court Civ.Case No.205/2003)***

JUSTINE RUTTA.....APPLICANT

Versus

LUCHIUS BEGENYI.....RESPONDENT

5/9/2006 & 5/12/2006

JUDGMENT

RWEYEMAMU,J:

This is an appeal by **Justine Rutta**, against the District Court (DC), Ruling dated delivered on 1/7/2005, refusing to grant him leave to file an appeal against the Primary court (PC) decision in civil case No.205/2003 out of time. In the latter decision, the appellant lost a suit he had filed against the respondent in a Judgment delivered on 15/1/2004.

Refusing the application for extension of time the DC found that the appellant had failed to show sufficient cause for delay. That court disbelieved the appellant's ground that the delay was due to failure by the court to provide him with a certified copy of judgment and proceedings; or that he bought the same as soon as it was supplied, in support of which he produced an Exchequer receipt to show the date he purchased the same.

The Respondent's arguments which were believed by the DC were that the applicant (appellant) had failed to act in time; The [proceedings and judgment were ready for picking on 16/1/2005 – i.e. day following delivery of the PC judgment; as evidenced by the court stamp which shows that the copies were certified on 16/1/2004.

The issue for decision is whether or not the DC's decision that the appellant failed to show sufficient reasons for delay was proper.

The only evidence on record were; that the appellant expressed his intention to appeal immediately in his letter of 15/1/2004; that an order was endorsed on the file requesting the registry officer to have proceedings typed; that a copy of judgment bears a stamp and signature of Primary Court Magistrate showing that it was certified on 16/1/2004. Although the speed is suspect, bearing mind the usual speed associated with preparing such copies in primary courts; there is nothing on record to disprove the facts as they appear.

The appellant had a burden of proof to show that what he alleged was true i.e. that the documents were not ready and available for collection on the dates stated.

Now, the date of purchase of the documents by the appellant is not proof that the documents were unavailable before. Further, his cases is further weakened by the fact that the date on the ERV receipt seems to have been clearly tampered with. It is not clear if the same was issued in May or March.

In view of that, I find the appeal unmerited and dismiss it with costs.

Sgd: R. M. RWEYEMAMU
JUDGE
5/12/2006

ORDER:

File sent to the DR for delivery of this judgment to the parties on 15/12/2006. Information should be sent to any party absent for them to collect their copy of the decision.

Sgd: R. M. RWEYEMAMU
JUDGE
5/12/2006

Date: 19/12/2006

Coram: J. R. Kahyoza - DR

Appellant: Absent

Respondent: Present

B/Clerk: J. Lwiza

Court: Judgment delivered in the present of the respondent. The appellant absent.

Sgd: J. R. Kahyoza
District Registrar
19/12/2006

I certify that this is a true copy of the original.

Sgd: J. R. Kahyoza
DR
19/12/2006