

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC. CIVIL APPLICATION NO. 17 OF 2004

(Arising from Employment Civil Case No.47/2002

Musoma District Court)

SECRETARY OF MARA

CONFERENCE S.D.A. CHURCH.....APPLICANT

Versus

NIKANORY MASEKO.....RESPONDENT

RULING

25/10 & 7/12/2007

Sumari, J.

This is an application for extension of time within which to file an appeal against the decision of the District Court-Musoma in Employment civil case No.47/2002. The judgment of the district court was delivered on 26/11/2003 in the absence of the applicant, then the defendant.

Very briefly a background of this matter is as follows. That on 29/12/2002 the applicant, then the plaintiff through a report by the Regional Labour Officers Musoma filed in the District of Musoma an Employment Cause No.47 of 2002 suing the applicant for a claim of his terminal benefits.

On 16/1/2003 applicant through his advocate, Mr. Makowe, filed a Written Statement of Defence denying claims, also raised three points of preliminary objection.

That on 7/02/2003 the record shows Mr. Makowe, for applicant was absent but with notice, praying for the matter to be fixed for mention on 13/2/2003. On 13/2/2003 Mr. Makowe and his client, applicant again were not present, this time without notice to court for his absence. On 13/2/2003 the matter was fixed for hearing on 7/4/2003; which date Mr. Makowe and applicant again were absent. All these times the plaintiff was attending court as scheduled. On 7/4/2003 the trial court ordered the matter to proceed ex-parte as no information received for the absence of the applicant or his advocate. The hearing then fixed on 22/4/2003.

It happens that on 22/4/2003 both parties were present and Mr. Makowe, applied for the case to be heard inter parties under O.9 R.7 of CPC, Ruling was fixed on 7/5/2003.

On 7/5/2003 no indication of what transpired in court. It is on 14/7/2003 the matter placed before the court and applicant and his advocate were absent. The respondent appeared. According to court record the suit file was misplaced, as per court order, so the ruling fixed on 6/8/2003, which date applicant and his advocate were absent but respondent was present. Ruling was infavour of the respondent and application by the applicant was dismissed.

The suit therefore proceeded ex-parte and the judgment entered in favour of the respondent (plaintiff) on 26/11/2003.

It is until 20/2/2004 when the applicant brought in court this application and not on 3/3/2004 as submitted by the respondent's advocate.

Mr. Makowe, learned advocate has submitted that applicant's delay in filing an appeal in time is due to the fact that applicant was not informed of the date of the judgment. That according to his paragraph 7 of the affidavit, it was on 29/1/2004 when on inquiry to court he got informed of the outcome, meaning judgment results.

It should be observed that from 26/11/2003 date of the judgment to 29/1/2004 is about 64 days elapse (emphasis added).

Mr. Makowe is of the views that whether non-notification of the date of judgment amount to good cause to extend time within which to appeal. According to him this is a sufficient and good cause in the circumstances of this case for the application to be granted. He has referred this court to a decision in the case of **AIDAN CHALE v R MBEYA – unreported.**

In reply the respondents' advocate Metro Law Chambers submitted that the applicants' notion that he was not notified of the judgment date is irrelevant to the issue at hand as the applicant and/or his advocate were aware of the date of the delivery of judgment/ruling. That the reasons for delay advanced by the applicant are not sufficient reasons to persuade the court to enlarge

time for filing an appeal as it is unreasonably two months and 27 days out of time.

To my close perusal of the record I have noted that this application was filed on 20/2/2004 and not on 3/3/2004. Close scrutiny shows that the Chamber Summons was signed by the District registrar on 3/3/2004, so we should not confuse the two dates. The application was therefore filed 86 day after the judgment was delivered (That is two months and 24 days to be accurate). This is the time which one has to consider of whether with the reasons advanced the applicant's application can really be considered as sufficient reasons.

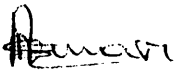
As I have endeavored to show from the background of this case, clearly the trend of attendance in court scheduled dates, applicant has never impressed me in his manner of attending to court. He has been absented himself frequently in such a way he himself lost track of the case. I dare say that he has never been serious in following or observing court proceedings. Even when his application for setting aside ex-parte order, showed no interest to know the outcome as he never appeared in court. There is however, no proof of efforts made by Mr. Makowe to know the outcome even after the case file was misplaced as openly stated by the court. One would expect that to be deposed in the applicant's affidavit. Instead Mr. Makowe has based the blames on non-notification of the judgment date; forgetting that that was an ex-parte – judgment.

With due respect, Mr. Makowe, learned counsel being a legal literate person, and for that matter a court officer ought to have known that he was duty bound to make followup of the outcome of his case , since it was already in his knowledge that the matter was proceeding ex-parte. Failure of which shows his unwillingness to work seriously.

Suffice therefore to point out that the delay appears to have been caused by inertia, negligence and lack of diligence because no substantive reason for delay in support of the application to justify extension of time to file an intended appeal.

Accordingly I dismiss the application with costs.




A.N.M. SUMARI
JUDGE

Delivered in absence of the parties.

At Mwanza
7/12/2007