

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

MISCELLANEOUS CIVIL APPLICATION NO. 99 OF 2004

*(c/f Arusha District Court Civii Appeal No. 2 of 2004, Original Arusha
Urban Primary Court Civil Case No. 98 of 2003)*

LAURENCE KAPELA APPLICANT

VERSUS

EMMANUEL URASSA.....RESPONDENT

RULING

R. SHEIKH, J

This is an application for leave to appeal out of time against the decision of the Arusha District Court in Civil Appeal No. 2 of 2004 delivered on 29/09/2004. The application was filed on 1/12/2004 and is supported by the affidavit of the applicant LAURENCE KAPELA. The application is brought under the Provisions of rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1963 G.N. No 312 of 29/05/64.

The reason advanced for the application is that though the applicant had filed a Notice of Appeal and applied for a copy of the

proceedings and judgement on 5/10/2004 it was not until 27/10/2004 that he was supplied with the same by which time the 30 day period of limitation had lapsed.

The respondent herein resisted the application on the grounds that the applicant was not diligent in pursuing his appeal and that he has failed to show sufficient cause for the delay.

I have carefully considered the parties' affidavits and submissions. While perusing the chamber summons it came to my notice that this application is incompetent due to the non-citation of the provisions of the law, to wit s.25 (1) (b) of the Magistrates' Courts Act No 2 of 1984, empowering this court to grant the prayer sought. The court has accordingly not been properly moved to grant the aforesaid prayer/order. The application is obviously incompetent as aforesaid.

However even if I were to consider this application on merits I would not grant the leave sought. In my view the reasons or grounds advanced by the applicant are not sufficient reasons for the delay. According to the applicant's affidavit evidence he received the judgement on 27/10/2004. It means that he had 30 days from this

date to file his appeal. (See the case of MARY KIMARO V. KHALFANI MOHAMED TLR 202). Clearly the appeal which was to be filed within 30 days as aforesaid should have been filed by 27/11/2004 at the latest. We are not told why the applicant failed to file the appeal within 30 days after receipt of the judgement and proceedings. The affidavit is silent about this delay, there is no explanation about the delay of 4 days. In the circumstances I am unable to hold that sufficient cause or reasons for the delay has been established and I will therefore hereby dismiss this application with costs.

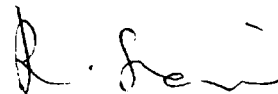


R. SHEIKH

JUDGE

21/02/2007

Ruling delivered this 23/02/2007 in the presence of both parties, and
Vero B/C



R. SHEIKH

JUDGE

23/02/2007