

IN THE HIGH COURT OF TANZANIA

AT TANGA

MISC. CIVIL APPLICATION NO.5 OF 2007

[Originating from Civil Case No.52/2006 Muheza District Court]

SAIDI WAZIRI.....APPLICANT

VERSUS

RAMADHANI MOHAMED KOMBO.....RESPONDENT

Date of last order: 21/7/2011

Date of Ruling: 23/9/2011

RULING

Teemba, J;

The applicant, Saidi Waziri filed this application in this court seeking for the following reliefs:-

1. That, the Honourable Judge be pleased to grant leave to file an appeal out of time;
2. Any other order this Honourable Court may deem fit to grant.
3. Cost of this application be provided.

The application is accompanied with the affidavit of the applicant who deposed that he could not appeal in time on the reason that he was on surgical operation at Teule Muheza hospital.

At the hearing date of this application, the applicant was in the service of Mr. Sangawe learned counsel whereas, the Respondent appeared in person-unrepresented.

Mr. Sangawe submitted that the decision intended to be appealed against was delivered on 21.8.2006 but as the applicant was on surgical treatment at Teule Muheza hospital, he could neither himself nor engage an advocate to file his appeal in time. In conclusion, Mr. Sangawe stated that the intended appeal has overwhelming chances of success on account that the matter being related to a land dispute, could not be tried by the Primary Court and subsequent the District Court at Muheza. He prayed that the application be granted as prayed.

In rebuttal, the Respondent resisted the application on account that the applicant was not sick. He went on and stated that the Applicant sold the farm with crops in dispute and whenever the execution process started, the applicant rushed to this court claiming that he was sick. In conclusion, the Respondent urged this court to dismiss this application for lack of merit.


In rejoinder, Mr. Sangawe insisted that as the applicant is handicapped this clearly shows that he was sick and failed to go to court in time. He concluded that the claim of crops and house fall under the land laws and the matter should have gone to the land courts and not the Primary Court. The learned advocate maintained that the applicant's appeal has overwhelming chances of success.

Having carefully read and considered the submissions of the parties and the contents of the Affidavit, I have observed that the record clearly shows that the applicant was on surgical operation at Teule hospital and when he recovered

he filed this application on 5th day of February, 2007 seeking for a relief to appeal out of time.


There is yet another issue to consider in this Application. It came out from the parties in arguing this Application, that the subject matter in their dispute is a farm with crops allegedly planted by the respondent. Mr. Sangawe submitted, issues of land have to be dealt with in land courts and not ordinary civil courts. As the appeal intended originated from the District Court, the issue of jurisdiction may be discussed on appeal.

For the reasons given above, this application is granted. The Applicant has to file the appeal within 30 days from the date of this Ruling. No order for costs.


R.A. TEEMBA, J.
23/9/2011

Court: The Ruling is delivered today in the presence of Mr. Sangawe for the Applicant and the respondent present in person.




R.A. TEEMBA, J.
23/9/2011