

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC.CIVIL APPEAL NO. 61 OF 2017

(Originating from Musoma District Court Civil Case No. 25 of 2016)

ALEXANDER K. MNIKOAPPELLANT

VERSUS

BEDA SIMION NYAISARESPONDENT

RULING

26/09/2018 & 24/01/2019

RUMANYIKA, J.:

All is against judgment and decree of 25/05/2017 of the District court for Musoma at Musoma (the trial court). Having ordered Beda Simon Nyaisa (the respondent) to take motor vehicle with Reg. No. T. 375 AQY make Toyota SURF (the m/v) as security and Shs. 1.5m being general damages following breach by Alexander K. Mniko (the appellant) of a Shs. 4,000,000/= loan agreement.

The two grounds of appeal revolve around **two** points as hereunder:-

- (1) the trial magistrate having awarded non proved damages.
- (2) the trial magistrate's failure to hold that the respondent had only right to possess the m/v.

Mr. Mhingo learned counsel appeared for the appellant. The respondent appeared in person.

When the appeal was called on for hearing on 26/09/2018, I had to hear parties on a "time-bar" related preliminary point of objection (the p.o) raised and taken, apparently by the layman respondent.

The respondent, unusually briefly submitted that the time barred appeal was lodged only at the time he undertook to execute the decree. That is it.

Equally briefly, Mr. Mhingo learned counsel in a way conceded and submitted that as the impugned judgment was delivered on 25/05/2017, the appellant applied in writing for copy on 05/06/2017, but he received it on 16/07/2017. Then lodged the appeal ten (10) days later i.e. on 26/07/2017. That is all.

The issue is whether the appeal was time barred. Time allocated for filing it was thirty (30) days. That means after appellant had applied for, but obtained, if at all copy of the impugned judgment say forty (40) days later (late in the day), without which could not have instituted the appeal. The point sufficed, if proved to constitute a sufficient ground for delay.

Nevertheless, the question is whether appellant could institute the appeal before he sought and obtained extension of time. The answer is, with no doubts no! Whereas it is settled law that extension of time is, by court grantable upon one assigning sufficient grounds and, by so doing giving account for each day of the delay, parties to case therefore cannot,

as of right have extension of time or, as suggested by Mr. Mhingo learned counsel, by themselves assume extension. I would increasingly hold that time barred matters are more of arbitrariness than justice.

Indeed the appeal was time barred. The p.o is sustained. Appeal is, for avoidance of doubts dismissed with costs.

Moreover, and without prejudice to the foregoing discussion and findings, I would, pursuant to revision powers conferred upon me dismiss the appeal summarily. Reasons are:-

Now that appellant admitted to have had, by 05/08/2016 a Shs. 4.0m interest free loan extended to him by the respondent, but defaulted repayment, the m/v (security) was, by all intents and purposes bound to go to the lender (now respondent). Whether or not value of the m/v exceeded the loan amount, it was, according to the self-explanatory loan agreement (Exhibit P1) immaterial in my considered opinion.

As per material terms and conditions, the executors' words are:-

...Na mkopo huu hauna riba yeyote ile bali fedha hii
italipwa kama ilivyo ... na ninahiyari kuwa dhamana
hii kama sitatimiza dhamana hii ichukuliwe ...

With regard to quantum of general damages being Shs. 1.50m, the same needed not be proved (unlike specific damages). However, now that the respondent have had the m/v with him using it (not proven parked), the order of damages was in my view uncalled for. It is set aside. Ground 1 is dismissed. So is ground 2.

It is very unfortunate that the appeal was even preferred. It is, as said, but to that extent only dismissed with costs. Ordered accordingly.

Right of appeal explained.



S.M. RUMANYIKA

JUDGE

17/01/2019

Delivered under my hand and seal of the court in chambers this 24th day of January, 2019 in the presence of the respondent in person and in absence of the appellant.



O.H. KINGWELE



DEPUTY REGISTRAR

24/01/2019