

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC CIVIL APPEAL NO. 47 OF 2020

(From Civil Application No. 45 of 2020 original Civil Case No. 98/2018 of Mwanza Urban Primary Court)

CRJE CAPRIPOINT..... APPELLANT

VERSUS

KENYA KAZI SECURITY (T) LTD RESPONDENT

JUDGMENT

11th & 26th February, 2021

RUMANYIKA, J.:

The appeal is against decision of Nyamagana district court dated 16/4/2020, with respect to Civil Case No. 98/2018 the judgment and decree of 25/05/2018 of Mwanza Urban Primary Court which refused CRJE Capripoint (the appellant) extension of time within which one to lodge an appeal.

It is equally also pertinent from the outset to point it out, again this is its historical background that Kenya Kazi Security (T) Ltd (the respondent) having had successfully sued the appellant and awarded shs. 15,673,461/= being payment for security service rendered by the respondents, but the

appellants appealed and in no ambiguity terms they won. The judgment and decree therefore were, with effect from 14/04/2020 quashed.

Although according to records the memorandum of appeal was presented and filed on 07/05/2020, the grounds were only two essentially verbatim and seriatim stated as under:-

1. That the court erred in law and fact for its failure to extend time within which one to lodge an appeal **2.** That the whole decision was against the law and equity.

Messrs Emmanuel John and Innocent Kisigiro learned counsel appeared for the Appellant and Respondent respectively.

When the appeal was called on 11/02/2021 for hearing, Mr. Innocent Kisigiro in my considered view he raised a non-contested but pertinent point for the court to considered that the appeal was abuse of the court process because following the trial court' judgment and decree there was been Appeal No. 56 of 2018 which on merit was dismissed on 11/11/2019. I will come back to this point shortly herein after.

Mr. Emmanuel John learned counsel submitted; **One**, that they had such ground sufficient enough for extension of time save for erroneous

findings of the learned resident magistrate. **Two;** that the appellant was not aware of the case in the trial court until late in the day on 05/09/2018 and there was to the contrary no proof service or something (Rule 18 of the Primary Court Civil procedure Rules, GN No. 310 of 1964 referred) that the appellant therefore wasn't fairly heard leave alone a hearing. **Three;** that whoever appeared and testify in the trial court he was a stranger to them given the applicants' actual names **China Railways Jian Chang Engineering Company Ltd** not **CRJE**.

The main issues are:- **(1)** whether the appeal is tenable under the law **(2)** whether down there the appellant had assigned sufficient grounds for extension of time.

To start with, like Mr. Emmanuel John advocate argued, the appellant may have had not been aware of the case in the trial court say until as late as at the execution stage yes, but it appears the cashier one Benny Bwakenya is on record from that end having testified on 28/03/2018 as Dw1, among others that with respect to Ghana and Capripoint points in the city they (appellants) and respondent had a security service contract and that indeed the latter owed them shs. 15,673,461 by way of set off being the balance (Exhibits 1 and 2 referred). It is very unfortunate that contrary

to what was promised and expected of them, the appellants brought no more witnesses. It means therefore the appellant cannot, at this stage be believed that they were not notified and heard.

With regard to the name of a person sued, the complaint is but with greatest respect afterthought because, not only, if at all were strangers to the proceedings, instead of applying for revision they appealed, but also the appellants did not at any point in time show that China Railways Jian Chang Engineering Company Ltd and CRJE we two separate entities legally. He who alleges must prove much as they did not also sufficiently establish that no such contract ever existed between them leave alone the alleged breach. After all it is trite law that serious as were, court records depict what actually had transpired in court so much so that the records can't be so casually impeached.

Moreover, but without prejudice to the foregoing discussion, like from the outset Mr. Innocent Kisigiro learned counsel precisely so pointed it out, I promised to back to it, and here I am, with regard to the impugned judgment and decree on the merit part of it one having lost the appeal for being time barred, the appellants should not have gone back to the district court applying for extension of time to lodge appeal much as with effect

from 16/04/2020 on that one the district court was **fanctus officio**. What abuse of the court process! This point therefore it takes me to the first issue herein above paused. Having said as above, I entertain no doubts that the application for extension of time was, from the word go out of place therefore legally not tenable. Moreover, now that for the herein above narrated reasons the appellant was properly sued, duly notified, appeared and through one Benny Bwakenya testified, the issue of no service it was neither here nor there. Issue number 2 also it is answered in the negative.

The devoid of merits appeal is dismissed with costs. It is so ordered.

Right of appeal explained.

S. M. RUMANYIKA

JUDGE

12/02/2021

The judgment is delivered under my hand and seal of the court in chambers this 26/02/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

26/02/2021