

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(APPELLATE JURISDICTION)

(PC) CIVIL APPEAL NO. 13 OF 2021

(Appeal from Misc. Civil Application No. 19 of 2020 Kasulu District Court Before: I.D. Batenzi, RM and Original from Civil Case No. 5 of 2019 of Kasangezi Primary Court)

MATHIAS RUHANAAPPELLANT

VERSUS

M/S GRINDA BUILDERS & SUPPLIES LTD..... RESPONDENT

JUDGMENT

19/7/2021 & 20/8/2021

L.M. MLACHA, J.

In the District Court of kasulu at Kasengezi, the appellant, Mathias Ruhana filed civil case No. 5/2019 claiming Tshs. 15,000,000/= against the respondent, M/S GRINDA BUILDERS & SUPPLIES Ltd. It was stated that the respondent had picked 6,000 trips of stones from the appellant's land but could not pay as agreed. The case was filed on 27/3/2019 and service was duly effected to the respondent. The respondent appeared. They were represented by Mr. Benjamini Kabogo. The case was kept on mentions but

later on 29/5/2019 the appellant's evidence was recorded. Both parties were present during the hearing. The case was adjourned to 12/6/2019 when it received the evidence of PW2, Lwikelela Kilanota. The appellant closed his case.

The court, suo motu made a ruling that the appellant's case was weak and ruled out that the respondent had no case to answer. It proceeded to dismiss the case. That was on 12/6/2019.

Sometimes later, that is on 21/12/2019, the appellant approached the District Court of Kasulu in Miscellaneous Civil Application No. 19 of 2020 seeking leave to appeal out of time. The application was dismissed, hence this appeal. In dismissing the appeal the District Court took into account the length of time and the duty to account for each day of delay as said in **Administrator General v. Mwanarabu Rajabu and others** [1980] TLR 304 and dismissed the application. The court could not be convinced that the appellant was sick in the period. It held that he was not sick for there was no medical evidence to prove the sickness. Instead there was evidence that he had been making follow up of his land case in the period. It had the view that if at all the appellant was sick he was supposed to attach Medical Chits in his affidavit something which he could not do.

Aggrieved by the decision, the appellant has come to this court on the following grounds;

- 1. That, the District Magistrate erred in law and fact for failure to take into consideration the illegality that the trial court had no jurisdiction to entertain the matter that involved company to which the claim amounted to 15,000,000/= (fifteen million only).*
- 2. The District Magistrate erred in law and fact for not taking into consideration the strong testimony and evidence adduced by the Appellant.*

The appellant appeared in person and made a short submission trying to show the court that he was real sick. He spoke with difficulties. He walked on the assistance of a stick. He appeared to have leg or back born problem. The respondent who was represented by Ms. Marry Milali told the court that illegality which is the basis of ground one is a new ground. It was not tested in the District Court. While accepting that it is a valid ground for extension of time he referred the court to **Benedict Munero v. BOT**, Civil Appeal No. 12/2002 and said that this court should not consider it because no submission has been made on it.

In ground two, counsel had the view that in the absence of Medical Chits/documents, this court should not believe that the appellant was sick.

She added that the appellant was supposed to account for each day of delay which he failed to do. She argued the court to dismiss the application with costs.


I have tried to study the records closely. I have considered the submissions and the condition of the appellant. With respect, I think that, this is one of the cases of failure to exercise the discretion of the court. I have the view that, the circumstances demanded for the exercise of discretion of the court in favour of the appellant and not otherwise. The appellant is an Oldman (now 84). He walks on a stick. His face suggest a led and or backbone problem. He says that he is attending clinics in Regency Hospital Dar es Salaam and KCMC Moshi. I don't think that it needs documents to know that he is sick.

Much as proof of sickness is done by medical documents, but I think that the rule is not without exceptions. We look for documents where we have doubts. That was not the case here. I think, with respect, if the district court had examined his age and physical condition well, the way I have done, it could see easily that he was real sick and could not demand documents. The magistrate appear to have not looked at his age and physical condition at all. If he had done so, he could easily extend the time.

There is also an element of illegality in the decision of the primary court for the court terminated the proceedings in an unusual way. The case was a civil case but it was terminated by a ruling of no case to answer as if it was a criminal case. In the exercise of the civil jurisdiction, the court, both in the Primary Court and District Court, has no power to dismiss a case on a no case to answer proceedings of a civil nature in the primary court are regulated by the Magistrates Court (Civil Procedure in Primary Court) Rules GNs 310/1964 and 119/1983. There is no such a procedure in the law making the ruling illegal. This could also be a ground for extending the time if properly examined.

That said, the appeal is allowed. The appellant is given 30 days within which to lodge his appeal to the District Court against the decision of the Primary Court. Costs to follow the events.




L.M. Mlacha

Judge

20/8/2021

Court: Judgement delivered in the presence of appellant and in absence of the respondent. Right of appeal explained.



A handwritten signature in blue ink, appearing to read "L.M. Mlacha", is written over a horizontal line.

L.M. Mlacha

Judge

20/8/2021