

IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR

ZNZ CIVIL APPLICATION NO. 5 OF 2012

1. MKUNAZINI SHIPPING ENTERPRISES
2. MKUNAZINI GENERAL TRADERS APPLICANTS

VERSUS

SAID KHAMIS HAMED RESPONDENT

**(In the Regional Court for Zanzibar with Extended Jurisdiction
at Vuga, Application arising from the Ruling which refused
to grant Extension of time to file Notice of Appeal)**

(Kayange (RM Ext. Jur.))

Dated 9th day of August, 2009

in

Civil Case No. 6 of 2007

RULING

4th & 11th December, 2013

LUANDA, J.A.:

The applicants MKUNAZINI SHIPPING ENTERPRISES and MKUNAZINI GENERAL TRADER intend to challenge the decision, they termed as exparte judgment, handed down by the Regional Court with Extended Jurisdiction at Vuga whereby the respondent was declared the winner. An attempt to set aside that judgment in the some court by the applicants was unsuccessful.

Equally unsuccessful was their application in the same Court for extension of time to file a notice of appeal out of time so that they appeal to this Court. They have now come to this Court for a second bite so that they be allowed to file a notice of appeal out of time. The application has been filed under Rule 10 of the Court of Appeal Rules, 2009.

The application was cause listed to come for hearing on 4/12/2013. On 2/12/2012 the respondent through Mr. Abdallah Juma Mohamed learned counsel for the respondent lodged a notice of a preliminary objection to the effect that the application is not proper before the Court because it contravenes Rule 47 of the Court of Appeal Rules, 2009 (the Rules) which reads:

47. Whenever application may be made either to the Court or to the High Court, it shall in the first instance be made to the High Court or tribunal as the case may be, but in any Criminal matter the Court may in its discretion, on application or of its own motion give leave to appear or extend the time for the doing of any act, notwithstanding the fact that no application has been made to the High Court.

In his submission, Mr. Abdallah said that the application ought first to be filed in the High Court as is provided by section 11 (1) of the Appellate Jurisdiction Act Cap. 141 RE. 2002. That was not done. The application is incompetent, he submitted. He prayed the same to be struck out.

In the course of hearing the preliminary objection, Mr. Abdallah also pointed out, without seeking leave of the Court, that the Regional Court when entertaining the application for extension of time was not properly moved by citing the wrong provisions of the law. I did not know what Mr. Abdallah intended to achieve. Was he raising another point of preliminary objection? If so, he did it under what Rule of the Court Rules? Did he seek leave of the Court to do so? This is a Court of law whereby its business is well governed by its rules which must be followed. Failure to follow the rules is to invite chaos in the conduct of Court business. So, I will not act on an issue which was not properly raised.

Back to our point of preliminary objection. Responding, Mr. Masoud H. Rukazibwa learned advocate for the applicants said his clients did file first the application for extension of time in the Regional Court and refused. They have thus come to this Court for extension of time.

This case originates from the Regional Court of Zanzibar at Vuga in exercising its extended jurisdiction. It heard the case and found out that the respondent's case has merits. It accordingly declared him the winner. The applicants are aggrieved, they attempted to set aside that judgment but in vain. They also sought an extension of time in the same Court, they were unsuccessful. They have come to this Court.

Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002 (the Act) to be read with Rule 47 of the Rules is very clear. It says where an appeal lies from a subordinate Court exercising extended powers, that subordinate Court and not the High Court as contended by Mr. Abdallah has powers to extend the time for the giving, not only the notice of appeal, but also granting an application for leave to appeal as well as to certify whether it is a fit case to come to this Court on appeal.

In the instant case the Regional Court with Extended Jurisdiction, which is deemed to be the High Court for purpose of Rule 47 of the Rules, refused to extend time to enable the applicants file notice of appeal out of

time. They have the right to come straight to this Court and apply for the same. The point of objection raised lacked merits. The same is dismissed with costs.

It is so ordered.

DATED at **ZANZIBAR** this 10th day of December, 2013.



B. M. LUANDA
JUSTICE OF APPEAL

I certify that this is a true copy of the Original.

Z. A. Maruma
DEPUTY REGISTRAR
COURT OF APPEAL