

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 3 OF 1996
In the Matter of an Intended Appeal

BETWEEN

SAID SALIM BAKHRESSA. APPLICANT

AND

ALLY A. NGUME. RESPONDENT

(Application for Extention of Time
to file Record of Appeal from the
Decision of the High Court of
Tanzania at Dar es Salaam)

(MAINA, J.)

DATED THE 7TH DAY OF NOVEMBER, 1995

in

Civil Revision No. 28 of 1995

R U L I N G

LUBUVA, J.A.

By notice of motion filed by Mr. Kisusi learned counsel for Said Salim Bakhressa, the applicant is applying for extension of time to file record of appeal originating from High Court Civil Revision No. 28 of 1995. In support of the application is an affidavit by Mr. Kisusi and one A.M. Balomi.

A brief background to this matter is as follows: Following the ex-parte judgment in Morogoro Civil Case No. 16 of 1993 against the applicant, the applicant applied to the trial Court (Morogoro District Court) to set aside the ex-parte judgment. The application was dismissed. From the order of dismissal by the trial court, the High Court was moved in Civil Revision No. 28 of 1995 to revise the order of dismissal by the District Court of Morogoro. On 7.11.1995, the High Court (Maina, J.) dismissed the application. Dissatisfied with the High Court decision, a notice of appeal was lodged on the same day (7.11.1995).

Copies of proceedings were also applied for and were duly collected. The memorandum of appeal was also prepared. On account of the fact that the order granting leave to appeal to the Court to date has not been obtained the record of appeal has not been completed. At the time when this application was being filed (26.1.1996) the time within which to institute the appeal had not expired. Under normal sequence of time schedule, from the date when the notice of appeal was lodged, the time expired on 11.2.1996. Because of the court vacation during the months of December, 1995 and January, 1996, and the fact that the High Court is concentrating on the election petition cases, it is not certain when the application for leave is likely to be heard. In these circumstances, unless the time is extended in which to file the appeal, the intended appeal would be time barred. Pending the intended appeal, in Civil Application No. 56 of 1995, the applicant has applied for stay of execution. This is therefore ~~an application for extension of time to file record of appeal~~

At the hearing of this application, Mr. Kisusi and Mr. Chandoo, learned advocates appeared for the applicant. The respondent was unrepresented, he appeared in person. In his address in support of the application, apart from elaborating the points raised in the affidavit Mr. Chandoo submitted that the applicant had done all that was necessary for the institution of the appeal within the time required. He further stated that having given notice of appeal and applied for and obtained copies of the proceedings etc, it was no fault of the applicant that leave to appeal to this Court was not obtained. As a result, he said, the time for the filing of the record had expired on 11.2.1996. Concluding his submission, Mr. Chandoo urged that this was an appropriate

case for the Court to exercise its power in extending the time in order to enable the applicant to obtain leave to appeal and institute the appeal.

Addressing the Court in this matter, the respondent stated that as this was a highly legal and technical matter, not being conversant with legal procedure, he left it to the Court to decide whether it was fair to grant the application. However, the respondent expressed concern that the matter would not take too long to be finalized in the event that the application is granted. It is to be noted that the respondent had duly filed a counter affidavit in reply to the applicant's affidavit.

Before proceeding any further in this matter, I think it is to be observed that on 20.2.1996 when the hearing of this matter was adjourned, the respondent complained that he was taking much of his time attending to Court cases on this same matter. He referred to a case now pending before the High Court in which Mr. Mbezi, learned advocate was representing the applicant. As a result, I ordered for a report to be submitted by Mr. Kisusi and Mr. Chantoo learned advocates on the position of the matter. At the hearing of this application, a written report by Mr. Mbezi learned advocate was submitted. In short, in that report, Mr. Mbezi in High Court Civil Appeal No. 32 of 1994 has withdrawn the application in respect of the applicant in this matter. That is, in so far as the applicant is concerned, he is no longer a party in Civil Appeal No. 32 of 1994 before the High Court.

I will now revert to the merits of the application itself. It is an application which has been filed under Rule 8 of the Tanzania Court of Appeal Rules, 1979. Under this rule, the

Court is empowered to invoke its discretionary powers judiciously if sufficient reason is shown for not taking the necessary steps to institute the appeal within the time specified under the rules. In this particular application, the record of appeal has not been filed in time. So the only issue is whether sufficient reason has been shown to justify the applicant's non institution of the appeal within the prescribed time. As shown earlier, I am satisfied that the applicant has as far as possible taken all the necessary legal steps required of him in instituting the intended appeal. For instance, when the High Court handed down its decision on 7.11.1995, the notice of appeal was lodged on the same day. Similarly, copies of proceedings and ruling were applied for and obtained all within the required time. The ~~application for leave to appeal~~ by Chamber ~~appeal~~ has also been filed. However, the situation did not improve as the court vacation commenced thereafter. And now with the sensitive election petition cases high on the priority cause list of the High Court, the application for leave has not to date, been determined. As a result, the time for the filing of the record of appeal has expired on 11.2.1996. In these circumstances, I accept Mr. Chandoo's submission that though the applicant had taken the necessary steps for the institution of the appeal in time, the subsequent delay in completing the record of appeal was not his fault. The matter as already explained, is still awaiting the High Court's decision on the application for leave to appeal.

In the event, I am satisfied that the circumstances of the case are such that it is in the interest of justice to grant the application. Sufficient reason has been shown for the granting of extension of time to file the record of appeal. It is ordered

that the time for the filing of the record of appeal before this Court from the order of the High Court in Civil Division No. 28 of 1995 be extended until such a time that leave to appeal is obtained. It is further ordered that the record of appeal should be filed ten days (10) from the date leave to appeal is granted.

As expressed by the respondent, in order to avoid an indefinite delay in the matter on grounds of non availability of leave to appeal, it is hoped that the High Court would, despite its heavy schedule endeavour to deal with the application expeditiously. The matter to be brought to the attention of the High Court. Application is allowed. Costs in the cause.

DATED AT DAR ES SALAAM this 11th day of March, 1996.

D.Z. LUBUVA

JUSTICE OF APPEAL

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



(M.S. SHANGALI)

DEPUTY REGISTRAR