

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO.101 OF 2006

STANDARD CHARTERED BANK (TANZANIA) LTDAPPLICANT

VERSUS

BATA SHOE COMPANY (T) LIMITED.....RESPONDENT

(Application for extension of time to serve record from the Judgment of
the High Court of Tanzania at Dar es Salaam)

(Kimaro,J.)

Dated 13 day of December, 2005
in
Commercial Case No. 3 of 2005

.....

RULING

11th & 18th October, 2006

MSOFFE, J. A:

This is an application for extension of time to serve the respondent with the memorandum of appeal and the record of appeal in respect of Civil Appeal No. 62/2006 which was lodged in this court on 21/7/2006. The application which is made under Rule 8 of the Court Rules, 1979 is supported by the affidavits of Aloysius S.K Mujulizi and Paul Kibuuka.

In order to appreciate the essence of the application the following background information is helpful. As already stated, the memorandum and record of appeal in respect of Civil Appeal No. 62/2006 were filed on 21/ 7/ 2006. Under Rule 90 (1) of the Court Rules the applicant was supposed to serve these documents to the respondent before or within seven days after lodging them. To be specific, he was required to do so on or before 28/7/2006. Unfortunately he did not do so, hence this application for enlargement of time to effect the service. It is discerned from the affidavits in support of the application that Paul Kibuuka, an intern from the University of Dar es Salaam working in the law firm of Ishengoma, Masha, Mujulizi and Magai (Advocates), inadvertently overlooked to do so. The omission or failure was brought to the attention of Mr. Aloysius S. K. Mujulizi on Monday 31/ 7/ 2006. Three days later, that is on 3 / 8 / 2006, this application was filed.

Messrs. Mujulizi and Julius Kalolo – Bundala learned advocates for the applicant and the respondent, respectively, addressed me at length on the merits or otherwise of the application. In brief, Mr. Mujulizi was of the view that what happened in the matter at hand was very unfortunate. However, he went on to say, the omission did

not occasion any injustice to the respondent. He accordingly prayed for the Court's indulgence and thereby grant the application.

On his part, and again in a nutshell, Mr. Julius Kalolo - Bundala submitted that this was a case of gross negligence and inaction which should not be entertained by the Court.

I have given careful thought to the arguments advanced by learned counsel. Under Rule 8 the Court has power to extend time if sufficient cause is shown. The power is at the discretion of the Court.

I agree with Mr. Julius Kalolo – Bundala that generally speaking inadvertence is not a sufficient cause for enlargement of time under Rule 8. However, in appropriate cases extension of time may be granted where a party puts forward such plea. For example, in **Michael Lessani Kweka versus John Eliafye** (1997) TLR 152 at page 153 this Court (Kisanga, J. A.) stated thus: -

“.....Although generally speaking a plea of inadvertence is not sufficient, nevertheless I think that extension of time may be granted

upon such plea in certain cases, for example, where the party putting forward such plea is shown to have acted reasonably diligently to discover the omission and upon such discovery, he acted promptly to seek remedy for it."

In the instant case, Paul Kibuuka is shown to have overlooked serving the respondent's advocate with the documents on or before Friday 28/ 7/ 2006. Instead, an attempt was made to serve the documents on 31/ 7/ 2006, three days beyond the prescribed time. Mr. Mujulizi says in his affidavit that he discovered this omission on Monday 31/ 7/ 2006. Without wasting time, he drew and filed this application on 3/ 8/ 2006, as already stated. He did so before Civil Appeal No. 62/ 2006 was set down for hearing.

In my view, Mr. Mujulizi acted with reasonable promptness and diligence. In other words, the way he conducted himself in handling the matter after discovering the omission would warrant consideration of the discretionary power under Rule 8 in favour of the applicant. I accordingly grant the application with no order as to costs.

A copy of the memorandum of appeal and the record of appeal are to be served on the respondent within a period of three days from the date of delivery of this Ruling.

DATED at DAR ES SALAAM this 18th day of October, 2006.

J. H. MSOFFE
JUSTICE OF APPEAL

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




S. M. RUMANYIKA
DEPUTY REGISTRAR