

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 116 OF 2008

**ROYAL INSURANCE TANZANIA LIMITED APPLICANT
VERSUS
KIWENGWA STRAND HOTEL LIMITED RESPONDENT**

**(Application for Leave to Serve a Notice of Appeal Out of
Time in respect of an Appeal from the Judgment and
Decree of the High Court of Tanzania, Commercial Division,
at Dar es Salaam)**

(Dr. Bwana, J.)

**dated the 25th day of February, 2005
in
Commercial Case No. 68 of 2003**

R U L I N G

3 December, 2008 & 9 January, 2009

NSEKELA, J.A.:

This is an application for leave to serve notice of appeal out of time in respect of Commercial Case No. 68 of 2003 made under Rule 8 of the Court of Appeal Rules, 1979. The notice of motion is supported by two affidavits sworn by Wilbert Basilius Kapinga and Saul Charles Mwamwala respectively. Both affidavits are to the effect that the applicant failed to serve the respondent with a copy of the

notice of appeal in terms of Rule 77 (1) of the Court of Appeal Rules, 1979.

At the hearing of the application, Mr. Mwaikusa appeared for the applicant and Mr. Mbwambo appeared for the respondent. The respondent filed an affidavit in opposition sworn by one Aloys Bahebe.

Mr. Mwaikusa submitted that the notice of appeal was filed on the 30.7.2008 and was duly collected on the 1.8.2008. Dr. Kapinga, who was handling the matter, had to urgently travel to Nairobi to keep an appointment with a doctor who was treating his child. He was back in his office on the 11.8.2008. On the 13.8.2008 he realized that the notice of appeal had not been served on the respondent, hence this application which was filed on the 15.8.2008.

Mr. Mbwambo, learned advocate for the respondent submitted that after reading the affidavits in support of the application, he had no objection to the application being granted.

It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, act very expeditiously and that the application has been brought in good faith. The essence of Rule 8 of the Court Rules is that the applicant must put before the Court material to show "**sufficient reason.**" The sole reason as can be gleaned from the two affidavits filed in support of the notice of motion and the oral submission by Mr. Mwaikusa, is essentially inadvertence. The facts averred do not show inaction on their part.

Admittedly, the decision in each case must depend on the facts and circumstances of the individual case. The facts show that it was sheer inadvertence and that prompt action was taken to rectify the situation, and the explanation is acceptable.

In the result, I am persuaded that the delay to serve the notice of appeal upon the respondent was sheer inadvertence. The applicant diligently and promptly rectified the error when it was discovered. I accordingly grant the application. The respondent

should be served with notice of appeal within seven (7) days of the date hereof.

It is so ordered.

DATED at DAR ES SALAAM this 31st day of December, 2008.



H. R. NSEKELA
JUSTICE OF APPEAL

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

(P. A. LYIMO)
DEPUTY REGISTRAR