

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

CIVIL APPLICATION NO. 8 OF 2014

**1. THE ZANZIBAR SHIPPING CORPORATION
2. THE HON. ATTORNEY GENERAL OF ZANZIBAR } APPLICANTS**

VERSUS

**1. MOHAMED HASSAN JUMA
2. KHAMIS MOHAMED KHAMIS
3. MOHAMED NAJIM MOHAMED
4. OTHMAN ABDALLA OTHMAN } RESPONDENTS
5. ABDALLA OMAR MJAWIRI
6. MKUBWA HAJI MHINE**

**(Application for extension of time to apply for reference
against a decision of a single Justice of Appeal)**

(Mandia, J.A.)

dated 1st February, 2013

in

Civil Application No. 88 of 2009

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RULING

4th & 8th December, 2015

KIMARO, J.A.:-

By a notice of motion filed in the Court on 30th December, 2014 the applicant is requesting for extension of time to file a reference against the decision of a Single Justice of the Court (Mandia, J.A.). The application was filed by Mr. Alhaji Said Hamad El-Maamry learned advocate under Rule 10

of the Court of Appeal Rules, 2009. The grounds for filing the application as listed in the notice of motion are four. One, time was wasted in accessing justice through a wrong procedure. The applicant wrongly filed an application for a revision against the decision of Mandia J. A. under Rule 65 (1) of the Court of Appeal Rules 2009 instead of invoking rule 62 (1) (b) which allows the filing of a reference against a decision of a single Justice. Two, delay in obtaining a copy of the judgment delivered by Hon. Luanda, J.A. Three, there is an important point of law to be decided from the decisions of Hon. Judge Mshibe and Hon Justice Mandia who rejected the application for extension of time because they dealt with matters which had already been decided by the Court of Appeal. Four, there is an important question of law the Court has to decide and that is the circumstances under which the Court can deal with a matter under article 107(2) (e) of the Constitution of the United Republic of Tanzania, 1977 as against being bound by technicalities.

The application is supported by the affidavit deposed by Alhaji Said Hamad El-Maamry. An affidavit in reply to oppose the application has also been deposed by Mr. Ussi Khamis Haji. When the application was called for the hearing, the first applicant was represented by Mr. Godfrey Ukongwa,

Ukongwa, learned advocate while Mr. Juma Msafiri Karibona, learned State Attorney represented the second respondent. Mr. Ussi Khamis Haji learned advocate, represented the respondents.

Submitting in support of the application, the learned advocate for the first applicant adopted the affidavit deposed in support of the application. He said what is deposed in the affidavit of Alhaji Said Hamad El-Maamry is a clear indication that the applicant had not been sitting idle but it has been using the procedures availed by the law to access justice but he has not been successful. He associated the procedure of filing a revision against the decision of Mandia J.A instead of a reference to inadvertence on the part of the counsel who made the application, but nevertheless he cited the case of **Standard Chartered Bank (TANZANIA) Ltd V Bata Shoe Company (T) Limited** Civil Application No. 101 of 2006 (unreported) where the Court excused the inadvertence which had been made by a counsel for the applicant and granted the application. He said since the affidavit and the annextures attached thereto sufficiently explain the efforts made on behalf of the applicants to enable them access to justice so that their rights can be finally determined, he prayed that the application be granted. Other cases cited by the learned advocate are

The Project Manager ES-KO-International Inc. Kigoma V Vicent J. Ndugumbi Civil Application No. 22 of 2009(unreported), **Nordox Industries AS V John Paul Shibuda and Another** Civil Application No. 39 of 2015 (unreported), **Bank of Tanzania V Margareth Kumaliya and 4 others** Civil Application No. 39 of 2015 (unreported) and that of **Michael Leseni Kweka V John Eliafye** [1997] T.L.R. 152. He prayed that the application be granted. In all cases the application for extension of time was granted.

On his part, the learned State Attorney for the second respondent had nothing to add. He supported the submissions made by the learned advocate for the first applicant.

The learned advocate for the respondents adopted the affidavit he filed in reply. He said the applicants have not given sufficient reason for being granted extension of time, the mandatory requirement given under the rule the application has been preferred. He prayed that the application be dismissed with costs. In brief rejoinder, the learned advocate for the applicants reiterated that sufficient cause has been shown. He prayed that the application be granted.

What has to be considered in an application for extension of time is sufficient cause being shown.

The affidavit deposed in support of the application explains in details the history of the case and the efforts made by the applicant to access justice. The matter started as an employment cause after the respondents were dismissed from employment. Problems started when the appeal they had filed in the Court of Appeal to contest the decision of the High Court was struck out on a technical point. Subsequently, the applicant went back to the High Court and started the process of appeal afresh but no success was achieved. The application for extension of time it made in the High Court before Mshibe, J. was dismissed. Another application was made before Mandia J. A. in the Court of Appeal on a second bite but it was dismissed.

The major grievance in respect of the two applications is that the real issues involved in the applications were not addressed. Well, in as far as the application before me is concerned, my role is not to determine the merits or otherwise of the applications which were before the learned judges. That is a jurisdiction which I do not have. What my role is, in this application, is to determine whether the applicants have placed before me

reasons to explain why they were delayed in filing the application for reference. Nothing more, nothing less.

The reason given is that the learned advocate for the applicant inadvertently took a wrong procedure after the learned single Justice of Appeal had given his decision. Instead of making an application for a reference, he made an application for a revision. The application before Mandia, J. A. was dismissed on 2nd January, 2013. The Application for revision which was filed subsequent to the dismissal made by the single Justice was struck out on 3rd December 2014. This notice of motion was filed on 30th December 2014.

The learned advocate for the first applicant submitted that the learned advocate who was having the conduct of the case before he took over the case was negligent in not filing a reference after the single Justice of Appeal dismissed the application. He requested the Court not to punish the first applicant for that mistake. Indeed it was negligence on the part of the learned advocate to invoke the process of revision instead of a reference. But the learned advocate has also said that there are pertinent issues to be sorted out in the decision of the learned single Justice that he did not address. In my considered opinion this is a good reason for not penalizing

penalizing the first applicant for the mistake that was done by the learned advocate for the first applicant. In the case of **Michael Lessani Kweka V John Eliafye** [1997] T.L.R.152 the Court held that:

"The Court had power to grant an extension of time if sufficient cause has been shown for doing so;"

In this case the learned advocate took steps not a long time after the application for revision was struck out to file the application for reference. The application for revision was struck out on 3rd December, 2014 and on 31st December, 2014 the application for extension of time to file a reference was filed. In the case of **Michael Leseni Kweka** (supra), a clerk to an advocate was not diligent in serving the respondent two important documents necessary for exempting him from compliance with the prescribed period for filing an appeal. The Court held:

"In the instant case the appellant had shown reasonable diligence in correcting the error immediately upon discovery and this conduct warranted consideration for enlarging the time in his favour."

In this application the fact that the first applicant has not been sitting idle, but has in all the period being engaged in applications necessary to allow him access the justice system by way of an appeal warrants the grant of the application. For this reason I do not agree with the learned advocate for the respondent that the first applicant has been sitting idle on its rights and that it does not deserve being granted the application.

I grant the application for extension of time to file the reference. The same should be filed within a period of one month from the date of the delivery of the ruling.

DATED at **ZANZIBAR** this 5th day of December, 2015.

N.P.KIMARO
JUSTICE OF APPEAL

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



J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL