

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

CIVIL APPLICATION NO. 566/01 OF 2018

**1. MPOKI LUTENGANO MWAKABUTA
2. FRIDA VUMILIA KESSY APPLICANTS**

VERSUS

**JANE JONATHAN (As a Legal representative of
the late SIMON MPERASOKA deceased) RESPONDENT**

**(Application for extension of time within which to lodge an application
for leave to appeal to the Court of Appeal from the decision of the High
Court of Tanzania at Dar es Salaam)**

(Muruke, J.)

**Dated the 30th day of September, 2016
in
Civil Appeal No. 116 of 2013**

RULING

11th May & 2nd June, 2020

KITUSI, J.A.:

This is an application for extension of time to apply for leave to appeal to the Court. The applicants' first application was refused by the High Court. This, therefore, is a second bite, made under Rule 10, 47, 48 (1), (2), 49 (1) of the Court of Appeal Rules, 2009 as amended.

The applicants' counsel Mr. Karoli Valerian Tarimo took an affidavit in support of the application and filed written submissions, both of which he adopted on the date of the hearing. Jane Jonathan,

the legal representative of the late Simon Mperasoka, the original respondent entered appearance in person. Her advocate one Desideriy Ndibalema who had earlier filed an affidavit in reply defaulted appearance even after I had adjourned the matter twice. The respondent was ready to proceed.

What comes out from the affidavits and written submissions is the following story; The respondent successfully sued the applicants in the Resident Magistrates' Court of Dar es Salaam at Kisutu. The applicants' appeal to the High Court was partly successful but they were still aggrieved.

The applicants applied for leave to appeal to the Court but that application was struck out for not being accompanied by the judgment and decree of the High Court. Thus when the applicant obtained copies of those requisite documents they had missed the boat because time was not on their side. They applied for extension of time within which to apply for leave but as already indicated, that application was refused. Hence this application.

In the written submissions, counsel has pointed out the obvious that under rule 10 of the Rules, I have the discretion to grant the prayer upon being satisfied that the applicants have shown

good cause for the delay. Cases of **Mantrack Tanzania Limited v. Raymond Costa**, Civil Application No. 11 of 2010 and **Tanzania Investment Bank v. Alfani Bushiri Kikuye**, Civil Application No. 59 of 2013 (both unreported) have been cited to support that point and for the proposition that there is yet no definition of what amounts to good cause.

There is also a contention of there being an illegality in the decision sought to be challenged. The cases of **Eliakim Swai and Frank Swai v. Thobias Karawa Shoo**, Civil Application No. 2 of 2016 and **Abubakar Ali Himid v. Edward Nyeluseye**, Civil Application No. 51 of 2007 (both unreported) have been cited.

The respondent's affidavit in reply provided very scanty rebuttal by simply accusing the applicant for negligently filing the application for leave without attaching copies of judgment and decree. At the hearing, the respondent, fending for herself, attacked the application for not showing sufficient explanation for the delay.

In rejoinder the learned counsel submitted that the length of the delay is only four days, after all, counting from the date a copy of the order of refusal was served on them.

It is settled law that in exercising my jurisdiction under rule 10 of the Rules which is discretionary, I have to be guided by agreed tale signs. These are the length of the delay, whether it has been explained away, diligence on the part of the applicant as opposed to negligence or sloppiness and whether or not there is an illegality in the decision sought to be impugned. The case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), is very handy on this.

I will just take a look at the length of the delay first, and I will go by what the affidavit states. It is clear in paragraph 8 of the supporting affidavit that the copy of the order refusing extension of time in the first bite was made available to the applicants' counsel on 7th December, 2018. This application was lodged on 13th December, 2018, about six days later. According to Mr. Tarimo, there was a public holiday in between and a weekend. It is, as submitted by Mr. Tarimo, a period of four days we are talking about and that period, in my view, does not appear inordinate.

I am aware of the requirement for an applicant to account for each day of the delay. See **Bushiri Hassan v. Latifa Mashayo**, Civil Application No. 2 of 2007; **Bariki Israel v. Republic**, Criminal Application No. 4 of 2011 and **Crispin Juma Mkude v. Republic**, Criminal Application No. 34 of 2012 (all unreported) and all cited in the case of **Lidger Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 (unreported).

The record speaks well of the conduct of the learned counsel for the applicant that whenever he hit a snag in his pursuit of this matter he immediately took steps. It needs no ever emphasizing that my discretion under rule 10 has to be exercised with reason and sence of justice. See **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported). Taking a leaf from the case just cited I feel inclined to conclude that the period of the delay being only four days, the justice of the case is in favour of granting the application.

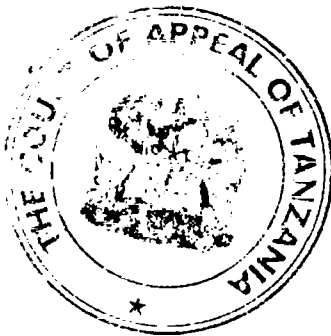
I need not discuss the other ground of illegality which is not only tricky but rather obscure. For the reason that the applicant's counsel was diligent and that the period of the delay is not at all inordinate, I grant the application.

The respondent has pleaded to be a widow who is anxious to go back to her place of domicile. I gather that she has no means. For this reason, I shall make no order as to costs. I order the intended application for leave to be filed within fourteen (14) days of the delivery of this ruling. Order accordingly.

DATED at DAR ES SALAAM this 28th day of May, 2020.

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 2nd day of June, 2020 in the presence of Mr. Karoli Tarimo, learned Counsel for the Applicants and Mr. Karoli Tarimo, holding brief of Mr. Desidery Ndibalema, Counsel for the Respondent is hereby certified as a true copy of the original.




E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL