IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 234 OF 2015

DAR ES SALAAM CITY COUNCIL..... APPLICANT

VERSUS

S. GROUP SECURITY CO. LTD ..... RESPONDENT

(Application for extension of time to file notice of appeal out of time from the decision of the High Court of Tanzania at Dar es Salaam)

(Mihayo, J.)

Dated 15th day of February, 2010
In
Civil Case No. 15 of 2007

RULING

19th April, & 11th May, 2016

KAIJAGE, J.A.:

The Applicant was aggrieved by the judgement and decree dated 15/2/2010 given in favour of the respondent by the High Court at Dar es Salaam in Civil Case No. 15 of 2007 (the main suit).

Against the said judgment and decree, the applicant timeously instituted Civil Appeal No. 35 of 2011 which was struck out by this Court on 29/2/2012. It was struck out for being incompetent on account of "having been instituted in the name of and by a non-existing person." This was in accordance with Government Notice (GN) No. 416 of 2010 published on

12/11/2010 in which the order dissolving the applicant's establishment was made and its assets and liabilities transferred to Ilala Municipal Council.

It is common ground that by operation of a subsequent GN No. 215 of 2012 published on 15/6/2012, the said dissolution order was revoked and the functions, assets and liabilities earlier vested in Ilala Municipal Council were restored to the applicant, Dar es Salaam City Council. It was against this background that the applicant belatedly filed, under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 (the AJA), Misc. Civil Application No. 405 of 2014 in the High Court at Dar es Salaam seeking for an order extending time in which to lodge the notice of appeal out of time against the said decision of the High Court in the main suit. However, that application was refused by the High Court in its Ruling dated 18/6/2015. The applicant has now come to try a second bite in this Court permissible under Rule 10 as read with section 11 (1) of the AJA and Rule 47 of the Tanzania Court of Appeal Rules, 2009 (the Rules).

By Notice of Motion brought under Rule 10 of the Rules, the applicant, once again, is seeking for an order extending of time within which to lodge a notice of appeal out of time against the decision of the High Court in the main suit. The application is supported by an affidavit sworn by Jacquiline

Mosha, a Legal Officer in the applicant's establishment, and it is predicated upon the following sole ground:-

> *"That the applicant was prevented to file the notice of appeal by the operation of the law."*

Before me, the applicant and the respondent had, respectively, the services of Mr. Jumanne Mtinangi and Mr. Audax Vedasto, learned advocates.

At the hearing, Mr. Mtinangi adopted what is stated in both the affidavit and the written submission filed in support of the application. However, upon the Court's prompting, he readily conceded that the applicant has not accounted for slightly over sixty (60) days running between **9/9/2015** the date when the applicant allegedly became aware of the High Court decision refusing extension of time in which to lodge the notice of appeal out of time and **11/11/2015** when the present application was filed. Notwithstanding the said unexplained interlude, he nevertheless urged me to grant the extension of time sought.

Mr. Vedasto, on the other hand, after expressing his desire to adopt the contents of the respondent's affidavit in reply and the supporting written

submission, he contended that the applicant has not shown sufficient cause warranting the exercise of this Court's discretion under Rule 10 of the Rules.

Rule 10 of the Rules upon which this application has been brought reads:-

> *"R.10 The Court may,* ***upon good cause shown*** *extend the time limited by these Rules or by any decision of the High Court or tribunal, for doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."*

[Emphasis supplied].

The only issue which calls for determination in this matter is whether the applicant has shown good cause for extending the time sought in the present application.

It is stated in paragraphs 10 and 11 of the applicant's supporting affidavit that GN No. 215 of 2012 restored to the applicant its assets and liabilities including its status in pending proceedings in courts of law. Material subsequent events following the publication of that GN are stated thus in paragraphs 12, 13 and 14 of the applicant's affidavit:-

> *"12. That on 14th August 2014 the Applicant filed an application No. 405 of 2014 for extension of time within which to file a Notice of Appeal. The application was filed in the High Court of Tanzania Dar es Salaam Registry.*
>
> *13. That on 9th September, 2015 the applicant became aware that the Ruling in Civil Application No. 405 of 2014 was delivered on 18th June, 2015 the same was dismissed.*
>
> *14. That* ***the delays*** *in filing the Notice of Appeal and the Application* ***have been caused by operation of the Law*** *and all along the applicant has been in Court litigating In good*

faith including the Application for extension of time to file the Notice of Appeal. The application which was dismissed necessitating this application."

[Emphasis supplied].

Admittedly, by operation of GN No. 416 of 2010, the applicant's establishment ceased to exist and, as such, it could not have appealed against the decision of the High Court in the main suit before its status, assets and liabilities were restored by operation of the subsequent GN No. 215 of 2012 published on 15/6/2012. Following the publication of the latter GN, there was certainly nothing preventing the applicant to diligently and promptly take necessary legal steps towards pursuing the intended appeal to this Court. It appears that in the immediate aftermath of the publication of GN No. 2015 of 2012, the applicant was involved in a series of incompetent applications she filed in this Court. Subsequently, Misc. Civil Application No. 405 of 2014 was filed in the High Court, but the extension of time sought in which to lodge the notice of appeal out of time was refused, hence the present application.

It is stated in the affidavit in reply and contended in the respondent's written submission that the applicant has not accounted for **over sixty (60) days** between **9/9/2015** when she became aware of the High Court decision in Misc. Civil Application No. 405 of 2014 and **11/11/2015** when she filed the present application. It is thus argued that the present application be dismissed with costs to the respondent.

As a matter of general principle, it is always in the discretion of this Court to grant extension of time under Rule 10 of the Rules. But the stance which this Court has consistently taken is that in an application for extension of time, the applicant has to account for every day of the delay. (See, for instance, **LYAMUYA CONSTRUCTION COMPANY LTD Vs BOARD OF REGISTERED TRUSTEE OF YOUNG WOMEN'S CHRISTIAN ASSOSIATION OF TANZANIA**; Civil Application No. 2 of 2010, **BARIKI ISRAEL Vs R**; Criminal Application No. 4 of 2011, **ROYAL INSURANCE TANZANIA LTD Vs KIWENGWA STRAND HOTEL LIMITED**; Civil Application No. 116 of 2008 and **SEBASTIAN NDAULA Vs GRACE RWAMAFA**; Civil Application No. 4 of 2014 (all unreported).

As hinted hereinabove, Mr. Mtinangi readily conceded, in no uncertain terms, that in the affidavit and in the written submission filed in support of

the present application, the applicant has not accounted for over sixty (60) days delay in filing the present application. This is, certainly, demonstrative of inaction and unqualified lack of diligence on the part of the applicant in taking essential steps towards pursuing the intended appeal. There being no material basis upon which to ignore such inordinate delay, I am compelled in the circumstance to find, as I hereby do, that good cause has not been shown by the applicant to justify an order for the extension of time sought.

Accordingly, the application is dismissed with costs to the respondent.

DATED at **DAR ES SALAAM** this 9th day of May, 2016.

S. S. KAIJAGE
JUSTICE OF APPEAL

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

E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL