

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

CIVIL APPLICATION NO. 43 OF 1994

BETWEEN

1. LOHAY AKONAAY
2. JOSEPH LOHAY } APPLICANTS

AND

THE HON. ATTORNEY GENERAL RESPONDENT

(Application for extension of time
from the Order of the High Court of
Tanzania at Arusha)

(MUNUO, J.)

dated the 21st day of October, 1993

in

Misc. Civil Cause No. 1 of 1993

R U L I N G

MNZAVAS, J.A.:

This is a notice of motion under Rules 8 and 57 of the Court of Appeal Rules. Under para (a) of the notice of motion the applicants are seeking "extension of time to date of actual filing to file a Reference in the matter of Civil Application No. 4 of 1993 between the parties".

When the application came up for hearing yesterday Mr. Lobutu learned advocate for the applicants informed the Court that he was withdrawing the affidavits referred to under para (b) of the notice of motion.

The learned Counsel argued that the matter to be decided by the Court was whether or not the Reference was timeous. If the answer was in the negative whether the applicants have advanced sufficient reason to account for their failure to file their Reference in time. It was the learned advocate's submission

that the ex-parte order that ordered stay of execution was delivered on 13/12/93 and that he came to know of the order on 29/12/93 and collected copy of the order on the same day and filed his Reference on 4/1/94.

Mr. Lobulu submitted that time of limitation started to run on 29/12/93, the day he came to know of the order of stay of execution. In support of his argument the Court was referred to the decisions in SURJIT SIGH TOOR v BABLA & GAJJA AUTO GARAGE - (1968) HCD 292, DR. M. DAYA, ADMINISTRATOR OF H.H. THE AGA KHAN HOSPITAL DAR ES SALAAM v T. SANGA (1968) HCD 353 And HAJI v GANGJI- (1971) HCD 106. That being the position it was submitted the Reference was filed in time.

In rebuttal Mr. Mono, learned Principal State Attorney submitted that Mr. Lobulu's argument was attractive but contrary to principles of law. It was argued that the affidavit relied on does not form part of the notice of motion before the Court because, it was submitted, the affidavit is dated 3/1/94.

It was argued that there were only two affidavits dated 12/9/93 which accompanied the notice of motion dated the same day.

Mr. Mono submitted that even if, for the sake of argument, he was to agree with the applicants' argument that the Reference was filed on 4/1/94 the Reference was not timeous. According to Mr. Mono, as the order for stay of execution was given on 13/12/93 the applicants were required to file their Reference on 19/12/93 at the latest. It was submitted that time started to run on the day the order was pronounced by the Court i.e. on 13/12/93 and not on the day the applicants came to know about the order i.e. on 29/12/93. It was argued that the applicants ought to have

filed their application for enlargement of time within a reasonable time after having been aware of the order for stay of execution.

Finally Mr. Mono submitted that should the Court find that the application for reference is time-barred enlargement of time should not be granted as, it was argued, the applicants have not shown sufficient cause to account for their delay in filing their application in time.

In reply Mr. Lobulu submitted that his clients have a grievance and that they have come to this Court to seek for redress. It was argued that three judges should be given opportunity to examine whether or not the procedure followed in hearing the application for stay of execution ex-parte was supportable in law.

On the submission by Mr. Mono that the applicants were not deligent in dealing with the application for a Reference Mr. Lobulu told the Court that the Attorney General should not have the temerity to accuse anyone of lack of deligence and laxity because he was the greatest offender in this respect. The learned Counsel for the applicants quoted Civil Applications No. 11/94, 12/94, 37/94 and 62/94 where the Attorney General is said to have applied for extension of time to file notice of motion and notice of appeal out of time.

Mr. Lobulu told the Court that they were only asking the Court to extend time up to 4/1/94 and that his telling the Court that the affidavit is dated 4/1/94 was a mere slip of the tongue and innocuous. The Court was asked to grant extension of time as prayed.

Rule 57 of the Court of Appeal Rules deals with Reference from decision of a single judge. It says:

"Where any person is dissatisfied with a decision of a single judge --- he may apply informally to the judge at the time when the decision is given or by writing to the Registrar within 7 days after the decision of the judge

(a) -----

(b) in any civil matter to have any order, direction or decision of a single judge, varied, discharged or reversed by the Court."

It is clear therefore that the applicants were under the law required to file their application for a Reference within 7 days of the date of the decision in Civil Application No. 4 of 1993. The decision in that application was given on 13/12/93. It therefore follows as night follow day that time of limitation started to run against the applicants on 13/12/93 the day the Order was delivered.

Mr. Lobulu argued, as already mentioned above, that he came to know of the order on 29/12/93, and that time of limitation should start to run against the applicants from that date, 29/12/93.

With respect of the learned Counsel he will no doubt agree with me on reflection that the wording of Rule 57 regarding period of limitation is so clear that it requires no interpretation or interpolation. The decisions quoted by Mr. Lobulu in support of his argument that time starts to run on the date an applicant came to know of the decision were ^{obiter} and were decided on their peculiar facts. The law is that time of limitation starts to run on the date of judgement, ruling or order is delivered by the Court.

The order of the Court was given on 13/12/93. Therefore under Rule 57 of the Court of Appeal Rules the applicants were required to file their application for Reference within 7 days i.e. by 19/12/93, at the latest, and not on 4/1/94 as they had done. That being the position the application for Reference was clearly filed out of time.

As to the question whether the applicants have shown sufficient reason to account for their dilatoriness in filing their application in time as required under Rule 8 of the Court of Appeal Rules it would appear that the applicants were, for quite some time, of the view that they were in time. This is supported by their letter to the District Registrar which accompanied the affidavit in which they categorically stated that their application for Reference was not time-barred. This clearly indicates tardiness or laches on the part of the applicants. There was lack of seriousness in preparing the application and hence the filing of the application for Reference out of time but not knowing they were already time-barred.

Coming to the argument that the Attorney General should not be heard to condemn laxity as he is the greatest offender this does not absolve the applicants for their failure to file their application in time - Two wrongs do not make a right.

What the applicants are required to prove under Rule 8 is that they were for sufficient cause prevented from filing their application for Reference in time. This they have not done and consequently the Court finds no sufficient reason under Rule 8 calling for enlargement of time limited by Rule 57 of the Court of Appeal Rules.

In the event the application is dismissed with costs.

DATED at ARUSHA this 1st day of December, 1994.

N.S. MNZAVAS

JUSTICE OF APPEAL

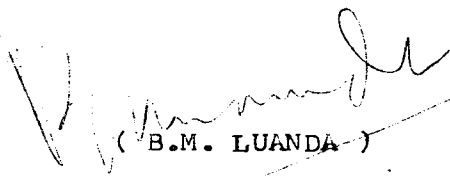
Mr. Lobulu: We pray for a Reference before three judges

Court: Application noted. As there is some urgency
in the matter the intended Reference should be
heard as soon as possible.

N.S. MNZAVAS

JUSTICE OF APPEAL

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


(B.M. LUANDA)

SENIOR DEPUTY REGISTRAR