

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 51 OF 1994
In the Matter of an Intended Appeal

BETWEEN

ABDALLAH SALUM APPLICANT

AND

WILLIAM RHODE RESPONDENT

(Application to file Notice of Appeal Out
of Time from the Order of the High Court
of Tanzania at Dar es Salaam)

(Mackanja, J.)

dated the 29th day of July, 1994

in

PC Civil Appeal No.75 of 1994

R U L I N G

LUBUVA, J.A.:

Under rule 8 of the Court's Rules, 1979, the applicant, represented by Mr. Sengalawe, learned Counsel filed this application moving this Court for an Order in the following terms:

"that the applicant be allowed
to file notice of appeal out
of time".

The ground advanced for this application was that the applicant was not notified of the date of the ruling (29.7.1994) by the Hon. Mr. Justice Mackanja from which it is intended to appeal. In support of the application, the applicant has filed an affidavit.

It is proposed to set out in full paragraphs 2, 3, 4, 5 and 6 of the affidavit in order to give a clear picture of the circumstances leading to this application. They are as follows:

2. I filed my appeal at Kinondoni District Court on 17.5.1994 after I was dissatisfied with the judgment of the said court arising from an appeal from the judgment of the Primary Court.
3. That I made a constant follow up of the appeal to be filed at the High Court and every time I reported at Kinondoni I am told to wait for the summons from the High Court which will notify me of the hearing date of my appeal.
4. That on 11.10.1994 I went to the High Court and I was told by Mrs. Maleko the Court Clerk incharge of the Civil Registry that my appeal was summarily dismissed on 29.7.1994.
5. That I am dissatisfied with the Order of the High Court and I want to appeal to this honourable Court.
6. I have been advised by my advocate one C.K. Semgalawe, that I should make this

application so that I can be allowed to file notice of appeal out of time, since fourteen days have elapsed since the order of the High Court was issued.

At the hearing of this application Mr. Sengalawe, learned Counsel for the applicant elaborated on the main ground of the application. While conceding that in a summary dismissal order, the law does not require the parties to be notified of the outcome, he argued only one point. That is that as the applicant did not know when the intended appeal was summarily dismissed, he failed to file the notice of appeal within the time required by the Court's rules.

The respondent, who appeared in person at the hearing of this application reiterated what was stated in his affidavit which he had filed. In essence, what is stated in the affidavit is that since the appeal by the applicant before the High Court was summarily dismissed under section 28(3) of the Magistrates' Courts Act, 1984, there was no legal basis for the applicant to be notified of the outcome of the appeal. He prayed for the dismissal of the application with costs.

It is common knowledge that under the provisions of rule 8 of the Court's Rules, the Court has discretionary powers to extend the time for the doing of any act authorised by the rules if sufficient reasons are given by the applicant to justify the extension.

In this application the issue is whether the fact that the applicant did not know the date when the appeal was summarily dismissed constituted sufficient reason for the Court's exercise of its discretionary powers to extend the time. At the hearing of the application, as already indicated, Mr. Sengalawe, learned Counsel for the applicant, apart from repeating this same fact did not advance any other reason. Dealing with almost a similar situation in which an application for the extension of time was made, we emphasized the fact that the powers under rule 8 of the Court's Rules are discretionary. That was APPLICATION NO. 20 OF 1987, DAR ES SALAAM CITY COUNCIL v. JAYANTILAL PRAGULBHAI RAJAN (unreported) in which we stated:

"It is now well established that under this rule, this Court has wide powers to extend the time for doing of any act in terms of the rule, provided that sufficient reason is shown. However, the problem often arises as to what amounts to sufficient reasons".

Applying this principle to the particular circumstances of this application, I am settled in my mind that the fact that the applicant did not know of the date of the summary dismissal order did not constitute sufficient reason in terms of rule 8 of the Court's Rules. This is so because, in the first place as can be seen from the wording of the order of dismissal,

the learned judge complied with the provisions of section 28(3) of the Magistrates' Courts Act, 1984. Under that section if a judge is satisfied that an appeal in any proceeding is without substance, he may summarily reject the appeal. It should be noted that sub-clause (3) of this section deals with proceedings of a civil nature as was the case in the instant application. The law as reflected under this sub-clause does not require the presence of the parties at the time when the appeals are summarily rejected. Secondly, it is also my view that an order for summary dismissal of appeals is not one of the orders set out under section 5 of the Appellate Jurisdiction Act, 1979 which are subject to appeal to the Court of Appeal. This being the position of the law I am satisfied that there is no legal basis for the applicant's complaint that he was not notified of the date of the summary dismissal of the appeal.

For these reasons, the application fails. There are no sufficient reasons or exceptional circumstances which would warrant the exercise the Court's discretionary powers to extend the time in which to file the notice of appeal out of time. I dismiss the application with costs.

DATED AT DAR ES SALAAM THIS 31ST DAY OF MAY, 1995.



D. Z. LUBUVA
JUSTICE OF APPEAL

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


(M. S. SHANGALI)
DEPUTY REGISTRAR