

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

MZA CIVIL APPLICATION NO. 4 OF 1994

BETWEEN

1. MANDAZI KICANZA  
2. RAMADHANI KILANGI  
3. MHOLO KILANGI

..... APPLICANTS

AND

MUNGUSA GOROBA ..... RESPONDENT

(Application arising out of the Judgment  
of the High Court of Tanzania at Mwanza)

(Masanche, J.)

dated the 23rd day of June, 1992

in

Civil Case No. 106 of 1990

R U L I N G

MNZAVAS, J.A.:

The applicants in this case have filed a notice of motion before this Court seeking extension of time to file their appeal to this Court. This was after the High Court (Masanche, J.) had delivered his judgment on 23/6/92.

In support of the application, the 2nd applicant, Ramadhani Kilangi, has argued before this Court that they failed to file their appeal in time because the High Court Registry failed to supply them with copies of the High Court proceedings and judgement in time.

The second applicant (the 1st has since died) argued that their advocate, one Mr. Mbusa, was to appeal to this Court but that he died before doing so hence their failure to lodge their appeal within the prescribed period.

In rebuttal Mr. Rutaisire argued that the applicants failed to lodge their memorandum of appeal within 60 days after the date when the notice of appeal was lodged as prescribed by rule 83 (1) of the Court of Appeal Rules.

The learned Counsel for the respondent also argued that the applicants did not send to the respondent copy of the letter they sent to the Registrar seeking for supply of copy of proceedings and judgement of the High Court. That the law required the applicants to send copy of the letter to the respondents the Court was referred to Rule 83 (2) of the Court of Appeal Rules.

Finally Mr. Rutaisire submitted that under Rule 84 (a) of the Court of Appeal Rules a party failing to institute his appeal within the prescribed time of 60 days after lodging his notice of appeal, he shall be deemed to have withdrawn his appeal.

In the alternative but without prejudice to the earlier submission the learned defence advocate argued that the applicants have failed to show sufficient cause to account for their delay in appealing to this Court in time.

In reply the 2nd applicant told the Court that as their advocate was at the time he was to lodge his memorandum of appeal to this Court undisposed they paid to the High Court Registry Shs. 10,000/= as Court fees to have the necessary papers of appeal to this Court prepared by the Registry and believed that the Registry would do the job for them.

In this case the following facts are not in dispute:

- (i) The High Court (Masanche, J.) delivered his judgement on 23/6/92 in which the applicants lost the case.
- (ii) The High Court Ruling (Lugakingira, J.) was delivered on 30/6/94. The Court held that the appeal has been filed in the wrong court.
- (iii) The applicants filed notice of appeal on 1/7/94, which was apparently in time.

(iv) Appellants' notice of motion seeking extension of time to lodge their memorandum of appeal against the decision of the High Court (Masanche, J.) was filed in court on 27/7/94. Bearing in mind that the decision of the High Court (Masanche, J.) was delivered on 23/6/92 and copies of judgement and proceedings were supplied to the applicants on 27/7/94 as shown by the Registrar's certificate under Rule 83 of the Court of Appeal Rules the applicants' notice of motion seeking for extension of time to file their memorandum of appeal to this Court was clearly inordinately out of time. It was lodged over two years after the decision of the High Court (Masanche, J.).

Before this Court the applicants argued that they failed to file their appeal to this Court in time because the High Court Registry failed to supply them with copies of proceedings and judgement in time. As shown in the Registrar's certificate the proceedings and copy of judgement were delivered to the applicants on 27/7/94; the very day they applied for them. The applicants have not shown good cause to account for their delay in applying for copies of proceedings and judgement over two years after the decision of the High Court (Masanche, J.). As for the argument that their advocate was indisposed at the time he would have filed their appeal in time, this argument is not supported by the record which shows that up to 4/11/94 the applicants' advocate was communicating with the Registrar.

Coming to the 2nd applicant's allegation that they paid Shs. 10,000/= to a clerk in the High Court Registry who told them that the High Court would undertake to prepare their appeal to this Court and that they believed that this would be done! There is apparently no evidence that a receipt in acknowledgement of the money, if it was at all paid, was issued to the applicants - Apparently the applicants demanded for a receipt which was issued to them after they had paid for copies of judgement and proceedings of the case. That they did

not demand a receipt for the Shs. 10,000/= they said they paid to the court clerk is, to say the least, beyond my comprehension. The applicants' story about payment of Shs. 10,000/= to the High Court Registry to have their documents for appeal prepared is in my view too good to be true.

As rightly argued by the learned advocate for the respondent the applicants failed to institute their appeal within 60 days after filing their notice of appeal as prescribed under Rule 83 of the Court of Appeal Rules. That being the position they are deemed to have withdrawn their appeal under Rule 84 (a) of the Rules.

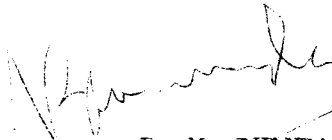
As they have failed to show good cause to account for their dilatoriness in lodging their appeal their application for extension of time is refused.

The respondent to have his costs in this Court and the High Court.

DATED at Mwanza this 2nd day of December, 1996.

N. S. MNZAVAS  
JUSTICE OF APPEAL

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

  
B. M. LUANDA  
SENIOR DEPUTY REGISTRAR