

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 68 OF 1995

BETWEEN

CAR AND GENERAL (T) LIMITED ..... APPLICANT

AND

NICHOLAS PERKINS ..... RESPONDENT

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DATE: 7th May, 1996

CORAM: MFALILA, J.A.:

Mr. D. Kesaria, Counsel for the applicant

Mr. P.M. Majithia, Counsel for the respondent

COURT - This is an application for extension of time within which to file application for leave to appeal. But since this is an appeal from a High Court judgement and decree, it does not appear that leave is required under section 5 of the Appellate Jurisdiction Act. However it is clear then that such an application must first be filed in the High Court under Rule 44 as section 11 of the Appellate Jurisdiction Act gives such power to the High Court too.

KESARIA - My Lord I concede and agree that there is no need to file an application for leave to appeal in a case such as this. This being the position I request the Court to use the powers under Rule 3 (1)(2) of the Court Rules to entertain this matter by departing from the provisions of Rule 44. After the Court has given the relevant directions, I will make the relevant fresh application.

MAJITHIA - I have no objection.

COURT - The Hon. The Chief Justice was misled by the papers filed in the record and made him to issue the administrative directions in Minute 3 of the Registry's file. This being an appeal from the judgement and decree of the High Court in Civil Case No. 39/94, the appeal therefore to this Court is of right. In the circumstances the application for extension of time within which to apply for leave to appeal is misconceived and therefore dismissed.

MAJITHIA - I am applying for costs of this application.

KESARIA - My Lord we filed this application out of necessity to comply with the directions of the Chief Justice, we agree that we filed the wrong decision in Court but the Notice of Motion is very clear and then we filed a decree.

R U L I N G

Mr. Majithia has asked for an order for costs of this application. Mr. Kesaria's view is that since they filed this application out of necessity to comply with the directions of the Chief Justice, his clients should not be penalised.

As stated earlier, the Chief Justice was misled by the wrong papers which the applicants filed and issued the directive which he did. If the applicants had filed the correct papers i.e. the judgement and decree of the High Court against which it was sought

to appeal, the Chief Justice would not have issued the directive which he did. The wording of the notice of motion and the presence of the decree were not enough to cure the inherent defect of the absence of the judgement. For these reasons, the applicants are wholly to blame for this state of affairs. The respondents will have the costs of this application.

7.5.96

L. M. MFALILA

JUSTICE OF APPEAL

KESARIA - My Lord I am applying to lodge in this Court my application for extension of time within which to file the notice of appeal, the reason is going back to the High Court would take a long time particularly as that Court has lost the record of this Court. I ask this by departing from Rule 44.

MAJITHIA - I am opposing the application not to file this application for extension of time in the High Court because the remedy sought is very fundamental i.e. extension of time to file notice of appeal. There is no formal application for the record from the registrar. We have no official word that the file is lost.

KESARIA - The last time we were before the Registrar for inter parties hearing, it could not go on because the file was missing. Therefore having this matter heard in the High Court would involve a lot of time.

R U L I N G

Rule 44 of the Rules of Court require all matters which can also be heard by the High Court to be filed first in that Court. Under section 11 of the Appellate Jurisdiction Act, the High Court is empowered to hear applications for extension of time within which to file notice of appeal. It is therefore necessary that such application must first be filed in the High Court unless reasons are established to depart from this Rule, under Rule 3 (1) of the Court Rules. In this case, a lot of time has been spent on pursuing applications which should not have taken place albeit all on the applicant's fault. But this delay is very costly in commercial transactions, money is tied up which could otherwise be released for other productive purposes, possibly even interest is piling up. It is therefore necessary that this matter is brought to as a speedy end as possible and I think this is in the interests of justice, particularly as the delay in the High Court is likely with that Court having misplaced its record.

For these reasons I am minded to use Rule 3 (1)(2) and order departure from Rule 44 and further order that the intended application by the applicants for extending time within which to file the notice of appeal be filed in this Court.

7.5.96

L.M. MFALILA  
JUSTICE OF APPEAL


MAJITHIA - I would like to file a reference against your Lordship's ruling.

COURT - Application granted for reference against this Ruling  
to be filed to the full Court.

7.5.96

L. M. MFALILA  
JUSTICE OF APPEAL

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

  
( M.S. BHARGALI )  
DEPUTY REGISTRAR