

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

AR CIVIL APPLICATION NO. 8 OF 1996

BETWEEN

1. INSPECTOR SADIKI
2. ASSISTANT INSPECTOR MATHIAS. . . APPLICANTS
3. THE ATTORNEY GENERAL

AND

GERALD NKYA. RESPONDENT

(Application for Extension of Time within which to serve the Respondent with a copy of the Notice of Appeal and a copy of the letter to the Registrar requesting record of Proceedings)

(Mrosso, J.)

dated the 26th day of July, 1996

in

Civil Case No.4 of 1993

R U L I N G

RAMADHANI, J.A.:

The respondent, Gerald Nkya, successfully sued the three applicants for malicious prosecution in the High Court of Tanzania at Arusha. The judgment was delivered on 26th July, 1996 and on 1st August, 1996 the applicants filed a notice of appeal and wrote a letter requesting copies of the proceedings. The respondent was neither served with a copy of the notice of appeal nor with a copy of the said letter. Hence, this application to extend time within which to serve the respondent with both of those copies.

The applicants were represented by Mr. Songoro, learned Senior State Attorney. He reiterated the contents of the affidavits of Mr. Mlambo, learned State Attorney Arusha and Mariam Issa Pangani, the personal secretary to the Principal State Attorney, Arusha. It has been explained by the applicants

that the notice of appeal and the letter requesting record of proceedings indicated that copies to be served on the respondent. However, because the law secretary had gone on maternity leave, Mariam Pangani filled the vacancy, but as she was new to the job, she sent the originals and all the copies to the High Court. No copy was sent to the respondent, Mariam Pangani herself, said so in her affidavit. The Attorney-General Chambers, Arusha became aware of this omission on the 3rd October, 1996 when the office received a letter from the respondent claiming the execution of the decree.

The respondent, on the other hand, in his counter-affidavit, said that on 19th September, 1996 that is forty-nine days after the notice of appeal was filed, he presented to the Attorney-General's Chambers, Arusha, copies of the proceedings, judgment and decree of the case to alert them that he was taking steps to execute the award. On 30th September, he sent to the Treasury his claim for Shs. 29,426,250/= by registered mail with a copy to the applicants. He went on to say that there was some further correspondence with the Treasury and that on 6th November, 1996 he sent the details required by the Treasury copied to the A-G Chambers, Dar es Salaam and Arusha. On 18th November the respondent went to the A-G Chambers, Arusha for some other business when a copy of notice of motion for this application was presented to him. He found out that the application had been filed on 13th November.

Mr. Songoro maintained that it was on 3rd October, 1996 and not earlier, that the A-G Chambers Arusha became aware that the respondent had not been served. What the learned Senior State Attorney was doing was refuting the suggestion of the

respondent that the A-G Chambers Arusha ought to have been alerted as far back as 19th September when the respondent delivered to them copies of the proceedings, judgment and decree. There are two matters here: First, Mr. Songoro, as a very senior legal officer, ought to have known better that the proper way to contradict the contents of the counter-affidavit of the respondent was not by making statements from the bar but was by filing a reply to the counter-affidavit. That the A-G Chambers has not done. Second, the affidavit of Mr. Mlambo filed in support of the application, states in paragraph 13 that upon receipt of the copy of the letter of the respondent claiming the decretal amount on 3rd October, 1996, they realised that the respondent had not received a copy of the notice of appeal. But it is curious that the receipt of the copy of that letter signalled to the applicants only one thing; that was that the respondent had not received his copy of the notice of appeal. Someone in the Chambers should have remembered that filing a notice of appeal does not automatically stay execution. So, the respondent could have received his copies but nevertheless, he could have decided to go ahead with execution. The applicants should have been prompted to another reaction; to file an application for a stay of execution.

But what is even more baffling, the reaction of the A-G Chambers, Arusha came after the expiry of forty days from the 3rd October, when they realised the omission, to 13th November, when they filed this application. Mr. Songoro told me that the Chambers, Arusha was trying to find out what had happened. However, the learned Senior State Attorney failed to say whether it was necessary to use forty days to do just that.

In Transport Equipment Ltd. v. Devram P. Valambhia, Civil Reference No. 7 of 1992, this Court refused to extend time within which to serve the respondent with a copy of the notice of appeal. Admittedly, the application in that reference was made six months after the omission became known. Here the application has been made after one month and ten days. But in that case the applicant was very quick to serve a copy of the notice of appeal to the respondent the day following the realisation of the omission. So, when he filed that application he had already made an attempt to serve the respondent. Despite that we were not persuaded to extend time. In that reference, just as in this application, the reason advanced for seeking the enlargement of time was the error of a law clerk in the chambers of the learned advocate for the applicant. We found that not to constitute "sufficient reason" under Rule 8.

Just for purposes of completeness, in Dalphine Parry v. Murray Alexander Carson, [1963] E.A. 546, the applicant was late for only five days when he applied for extension of time, but the Court of Appeal for East Africa refused to do so and despite the fact that they thought that the appeal had merit.

I cannot distinguish this application from the reference in Transport Equipment Ltd. There is no sufficient reason advanced to persuade me to exercise the powers under Rule 8. I dismiss the application with costs. It is so ordered.

DATED at DAR ES SALAAM this 27th day of October, 1997.

A.S.L. RAMADHANI
JUSTICE OF APPEAL

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

(M.S. SHANGALI)
DEPUTY REGISTRAR