

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 27 OF 1997

BETWEEN

UMOJA GARAGE. . . . . APPLICANT

AND

NATIONAL BANK OF COMMERCE. . . . . RESPONDENT

(Application for Extension of Time to  
make a Reference from the Ruling of a  
single Judge of the Court of Appeal  
of Tanzania at Dar es Salaam)

(Kisanga, J.)

dated the 23rd day of April, 1997

in

Civil Application No.26 of 1996

R U L I N G

RAMADHANI, J.A.:

The applicant appeared before KISANGA, J.A. seeking extension of time to file a notice of appeal after BUBESHI, J., had refused the same. KISANGA, J.A., gave his ruling on 23rd April, 1997 and the applicant had seven days within which to file his application for a reference. However, that was not done until on 15th May, that is, twenty-three days after the ruling and sixteen days after the time had elapsed.

Now, in this application Umoja Garage seeks enlargement of time within which to file an application for a reference to a panel of three judges of this Court. The applicant was represented by Bakari Ali Salum. His only reason was that the matter was mishandled by his advocate. He explained that he had told the advocate of his desire for a reference immediately after KISANGA, J.A., gave his ruling. In short the applicant gives the error of the advocate as his reason for seeking extension of time.

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On behalf of the respondent was Mr. Uzanda, learned advocate. He submitted that the dilatory handling of the matter by the court has nothing to do with this application. However, he advised that the matter could be a fit case for a review by the Tanganyika Law Society. The learned advocate submitted that in Daphine Parry v. Murray Alexander Carson [1963] E.A. 546, the applicant was late only five days but time was not enlarged because there was no sufficient reason, despite the fact that the Court found that the appeal had merit. In this application, the learned counsel submitted apart from the fact that the delay is of sixteen days, the appeal itself has no merit at all.

I sympathise with the applicant. If what he has deposed in his affidavit is true, then the advocate who handled the matter was professionally negligent. In fact this is the second time this matter is being mishandled. The matter went to KISANGA, J.A., for the extension of time within which to file a notice of appeal, because the original notice of appeal was struck out as the appeal was instituted hopelessly out of time. Let me be a little bit elaborate here. At the High Court there were two sets of proceedings of the matter: Before MREMA, J. culminating in a judgment and before BUBESHI, J. resulting in a ruling. Notices of appeal were filed against both decisions. The advocate applied to the Registrar for copies of the proceedings. These were given but only one certificate excluding time taken to prepare the record was issued and that was with respect to the proceedings before BUBESHI, J. The learned advocate used that certificate to institute the appeal against the decision of MREMA, J. and hence the expiry of time to institute the appeal.


However, this is not a Court of sympathy but it is a Court of law. There is a chain of authorities that an error of an advocate is not sufficient reason under Rule 8 for extending time. As no sufficient reason has been disclosed, I dismiss the application with costs. It is so ordered.

The Registrar of the Court of Appeal is instructed to refer this matter to the TLS for their consideration on the conduct of advocates.

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