

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 45 OF 1997  
In the Matter of an Intended Appeal

BETWEEN

ATTORNEY GENERAL. . . . . APPLICANT

AND

SAID JUMA MUSLIM SHEKIMWERI . . . . . RESPONDENT

(Application for Extension of time to file  
his Memorandum of Appeal from the decision  
of the High Court of Tanzania at D'Salaam)

(Samatta, J.K.)

dated the 1st day of November, 1996

in

Civil Case No. 3 of 1996

R U L I N G

LUBUVA, J.A.:

In this application, the applicant, the honourable the Attorney General is applying for an order that time be extended in order to enable the applicant to file the appeal. The application is supported by an affidavit deposed to by the Haruna Songoro Senior State Attorney. In parts, the following paragraphs of the affidavit provide:

5. That on 15 January, 1997, the High Court supplied the applicant with the ruling of the court and without the proceedings.
6. That in the absence of proceedings the applicant have (sic) failed to prepare memorandum of appeal within the prescribed time of 60 days as provided by rule 83 of the Court of Appeal rules.

7. That the applicant have (sic) requested from the High Court for copies of proceedings for the purpose of preparing his memorandum of appeal in terms of S. 83 of appeal rules.
8. That by the moment Applicant secure copy of proceedings and prepare a memorandum of appeal the time for filing an appeal will have elapsed.
9. That for the interest of justice Applicant prays the honourable court grant extension of time to file an appeal.

At the hearing of this application Mr. Songoro learned Senior State Attorney appeared for the applicant. In further elaboration of what is deposed in the affidavit, he briefly stated the background that gave rise to the matter. That in Misc. Civil Cause No. 3 of 1996, the President's decision to retire an officer in the Immigration Department in the public interest was quashed by the High Court on 1.11.1996 (Samatta, J.K. as he then was). As the applicant was dissatisfied with that decision notice of intention to appeal was filed on 30.11.1996. On 12.2.1997 by a letter addressed to the Registrar a copy of proceedings and ruling was requested but the letter was not copied to the respondent in the proceedings before the High Court. That the time schedule required under the rules for lodging the memorandum of appeal has expired and hence the need for the extension of time. The reason for the delay in filing the memorandum of appeal Mr. Songoro stated, was that the applicant was of the impression that the notice of intention to appeal was sufficient to move the Registrar to furnish the copy of proceedings and

ruling. As the intended appeal involved a matter of public importance touching on the powers of the President, Mr. Songoro urged the Court to exercise its discretionary powers in extending the time.

For the respondent, Mr. Nassoro, learned Counsel strongly opposed the application. He stated that from the historical background of the matter it seems clear that the office of the Honourable the Attorney General, the applicant has not been serious at all in the handling of this matter. For instance, he said, since the ruling in this matter was handed down on 1:11.1996, the notice of intention to appeal was filed on the last day and the respondent was served with the notice in September, 1997. Furthermore, Mr. Nassoro contended, as the letter to the Registrar applying for copy of proceedings in the High Court was not copied to the respondent, the applicant can not avail himself of the proviso under rule 83 (1) regarding the computation of time within which to institute the appeal. Mr. Nassoro went further in his submission that the matter does not warrant the exercise of the Court's powers under rule 8 because the handling of the matter by the applicant manifests nothing else other than sheer negligence and inaction on the part of the office of the Honourable the Attorney General. If the matter was considered to be of such great public importance, its handling does not reflect a corresponding seriousness on the part of the applicant, urged Mr. Nassoro. He pressed for the dismissal of the application.

I have given anxious and close consideration to these submissions. From the affidavital deposition and the oral submissions, I agree with Mr. Nassoro, learned Counsel that

the handling of this matter by the Office of the Honourable Attorney General, the applicant, manifests glaring acts of negligence and inaction. This is evident from the following facts: firstly, the notice of intention to appeal was filed on the last but one day in terms of the rules i.e. 13.11.1996; secondly, the notice was served on the respondent as late as September, 1997; thirdly, the letter to the Registrar applying for copy of proceedings and ruling was not copied to the respondent and fourthly, the fact that the applicant claims to have been convinced that the notice of appeal was sufficient to enable the Registrar to furnish a copy of the proceedings and ruling. It is incomprehensible that the Office of the Honourable the Attorney General manned by many Law Officers would fall into such trivial mistakes and omissions in matters of this kind. Such manner of handling, as correctly submitted by Mr. Nassoro, learned Counsel is not in accord with the seriousness that Mr. Songoro, learned Senior State Attorney urges this Court to believe the applicant attaches to this matter. What is more, it must be made clear from the outset that as the letter to the Registrar of the High Court applying for a copy of the proceedings and ruling was not copied to the respondent, the applicant cannot benefit from the exclusion of time taken in computing the time within which the appeal is to be instituted under the proviso to rule 83 (1) of the Court's Rules, 1979.

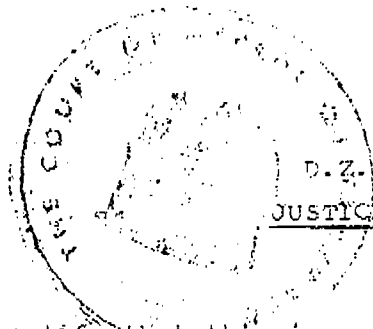
In these circumstances, the question to be posed is whether sufficient reason has been advanced to warrant the extension of time as sought by the applicant. On this, I have no difficulty in answering that the reasons as advanced by Mr. Songoro, learned Senior State Attorney for the delay are, with respect, not sufficient. It is common knowledge, indeed elementary that the

requirement of the rules pertaining to the processing of appeals should stringently be complied with by each and every party including the Office of applicant; the Honourable the Attorney General. It is incredible that an office which has handled so many cases of this kind for years would now seek to convince the Court that it was believed in that office that it was not necessary to apply for a copy of the proceedings and ruling after filing the notice of appeal.

Such being the position as regards the reasons advanced, I have also gone further to consider whether there are special or peculiar circumstances that would justify the extension of time. As already pointed out, Mr. Songoro, learned Senior State Attorney is firmly of the view that the matter is of such great public importance as to warrant the extension of time. Having had a cursory glance through the ruling of the High Court, I am in agreement with Mr. Songoro that the case raises such peculiar and special issues of law and constitutional powers of the President as to warrant extension of time. These issues, I am satisfied, are worth the consideration of the Court of Appeal and that it is in the interest of justice to grant the application.

Accordingly, it is ordered that the time for the filing of the appeal in this Court is extended until such time that a copy of the proceedings is received. It is further ordered that the appeal is to be filed ten (10) days from the date of receipt of the copy of proceedings. Application allowed. Costs in the cause.

DATED at DAR ES SALAAM this 29th day of October, 1967.



D.Z. LUEUVA  
JUSTICE OF APPEAL

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

( M.S. SHARGALI )  
DEPUTY REGISTRAR