

THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
In the Matter of Intended Appeal
CIVIL APPLICATION NO. 107 OF 2003
BETWEEN
CONSOLIDATED HOLDING CORP ... APPLICANT
AND
FAUZIA S. NASSOR ... RESPONDENT
(Application for Extension of Time within which to Apply for
Leave to Appeal and Application for Leave to Appeal from
Decision of the High Court of Tanzania at Dar es Salaam)
(Ihema, J.)
dated the 7th day of October , 2003
in
Misc. Civil Appl No. 296 of 1996
.....
RULING

RAMADHANI, J.A.:

The applicant, Consolidated Holding Corporation, represented by Mrs. G. N. Kato, learned advocate, has two applications: One, application for the extension of time within which to apply for leave to appeal. Two, application for leave to appeal to this Court after the High Court (IHEMA, J.), had refused on 7th October, 2003, to grant leave. Mrs. Kato, instead of making a fresh application for leave to appeal in this Court as provided in Rules 43 (b) and 44, she on 20th October, 2003, filed a notice of appeal against that refusal. When she realized her error, Mrs. Kato filed this notice of motion on 17th November, 2003,

that is, beyond the 14 days prescribed by Rule 43 (b). Before me, Mrs. Kato reiterated what she had said in her affidavit: "the delay in filling the notice of motion was not deliberate". She prayed to be excused.

On the other hand, respondent, Fauzia S. Nassor, had the services of Mr. J. Ndyanabo, learned counsel, who submitted that the application is devoid of any merit. Citing Calico Textiles Industries v. Pyarali Esmail Premji [1983] TLR 288 and Umoja Garage v. NBC [1997] TLR 109, he echoed the all time holding that an error of an advocate is not sufficient cause for extending time, so, the application be dismissed with costs.

Having heard Mrs. Kato making her submissions, I have no doubt in my mind that she is sincere that the error was not deliberate. However, this matter has been settled from the time of the East African Court of Appeal and, as pointed out by Mr. Ndyanabo, this Court said in Calico Textiles Industries, which, incidentally, is not on page 288 as Mr. Ndyanabo's list of authority cited, but on page 28:

Failure of a party's advocate to check the law is not sufficient ground for allowing an appeal out of time.

In Umoja Garage this Court said

- (i) It was clear that the error had been committed by the applicant's counsel and the Registrar could not be held blameworthy;
- (ii) In the circumstances no sufficient cause had been made out for enlarging the time as prayed.

Therefore, the enlargement of time within which to apply for leave to appeal is refused. In our opinion it is unnecessary to consider the second application of leave to appeal. The application is dismissed with costs.

DATED at DAR ES SALAAM this day of October, 2004.

A. S. L. RAMADHANI
JUSTICE OF APPEAL