

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 7 OF 2004**

**In the Matter of an Intended Appeal**

**BETWEEN**

**CONSOLIDATED HOLDING CORPORATION.....  
APPLICANT**

**VERSUS**

**1. AHMED MOTOR WAYS LTD.  
2. TRUCK FREIGHT (T) LTD. ....  
RESPONDENTS  
3. FUEL DISTRIBUTION NET WORK**

**(Application from the Ruling of the High Court  
of Tanzania at Dar es Salaam)**

**(Ihema, J.)**

**dated the 12<sup>th</sup> day of September, 2003  
in  
Misc. Civil Application No. 244 of 2003**

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R U L I N G**

**MROSO, J.A.:**

The applicant was dissatisfied with a ruling of the High Court, Ihema, J., which was delivered on 25<sup>th</sup> June, 2003. It intended to appeal it to this Court. However, it did not file the notice of appeal and the application for leave to appeal in time. The High Court had sat in a reference from a decision in taxation proceedings. The applicant, therefore, applied to the High Court for enlargement of time to file the notice of appeal and the application for leave to appeal. Both prayers were refused by the High Court, Ihema, J., on

12<sup>th</sup> September, 2003. It has now come to this Court applying for the same orders. Mr. Rweyongeza, learned advocate, appeared for the applicant and learned advocate Mr. Msemwa appeared for the respondents.

In his affidavit in support of the Notice of Motion, Mr. Rweyongeza says that after the ruling of 12<sup>th</sup> September, 2003 “the applicant had up to 12<sup>th</sup> November, 2003 to challenge” it. He proceeded to say that he wrote to court to apply for a copy of the ruling and explained how the High Court registry delayed in supplying it. On 28<sup>th</sup> November, 2003 he was supplied with the documents he needed. By then it was beyond 12<sup>th</sup> November, 2003 which he believed was the deadline for “challenging” the ruling, presumably by filing the present application. He believed he was therefore prevented by circumstances beyond his control to file this Notice of Motion.

Mr. Msemwa filed an affidavit in reply, or what he termed counter-affidavit, in which he disputed the reasons given in Mr. Rweyongeza’s affidavit by saying that the applicant had not demonstrated “any sufficient cause for delay in filing notice of appeal and application for leave to appeal (against) the two rulings dated 25/6/2003 and 12/9/2003 respectively”. The delay really was not in filing the notice of appeal or to apply for leave to appeal but in

applying for extension of time.

In his submissions in Court Mr. Rweyongeza has clarified (without asking for a suitable correction of the Notice of Motion) that the ruling intended to be impugned on appeal is the one which is dated 25<sup>th</sup> June, 2003 and not that which is dated 12<sup>th</sup> September, 2003, as wrongly reflected on the Notice of Motion. As mentioned earlier, no notice of intention to appeal or an application for leave to appeal were filed in time. When the applicant applied to the High Court for extension of time, leave to do so out of time was refused on 12<sup>th</sup> September, 2003. It is apparent that Mr. Rweyongeza thought he was also to appeal against that ruling; that was the reason he said in paragraph 5 of his affidavit -

5. That, the applicant had up to 12<sup>th</sup> November, 2003 to challenge the said ruling (obviously that of 12<sup>th</sup> September, 2003 which is mentioned in preceding paragraph 4 of the affidavit).

Now, from 12<sup>th</sup> September, 2003 to 12<sup>th</sup> November, 2003 is a period of sixty days or so, which is the period within which to appeal. But what Mr. Rweyongeza was to do

was to apply to this Court for the same reliefs he had sought in the High Court in an application under Section 11 (1) of the Appellate Jurisdiction Act, 1979 and were refused. Such application to the Court is governed by Rule 8 of the Court Rules. Rule 8 does not indicate the time limit within which an application to this Court should be made after extension of time has been refused by the High Court and I am not aware of any other rule in the Court Rules which fixes the time limit. Neither advocate adverted to this point and I am thus unassisted by their submissions. Rule 43 (b) fixes the time limit of 14 days for an application to be made to this Court for leave to appeal after such leave has been refused by the High Court. That provision is not relevant in applications for extension of time within which to apply either for filing a notice of appeal or for leave to appeal. One, then, has to resort to case law, if any. But I could not lay my hands on any such decision of this Court. All I can say, therefore is that a party who wishes to make an application to this Court after a similar one has been made to the High Court and refused, must do so within reasonable time after the refusal by the High Court. He cannot be free to take his time to do so.

In the case of the ruling of the High Court dated 12<sup>th</sup> September, 2003 I accept that the applicant needed the ruling of the High Court to accompany his Notice of Motion and a supporting affidavit to this Court. I am also satisfied

that its advocate acted diligently but was held back by the High Court registry which did not supply in time to the advocate the required documents. I therefore find there was sufficient cause for the delay to apply to this Court. But that is not the end of the problems of the applicant. The affidavit of Mr. Rweyongeza said precious little to explain the delay in applying to the High Court under Section 11 (1) of the Appellate Jurisdiction Act, 1979 to enable this Court to reach a conclusion that the High Court erred in its ruling of 12<sup>th</sup> September, 2003 in which it found insufficient grounds for the applicant's delay to seek extension of time to file a notice of appeal and to apply for leave to appeal. In other words, I have no basis for faulting the High Court which dismissed the applicant's application on 12<sup>th</sup> September, 2003.

Paragraphs 2 and 4 of Mr. Rweyongeza's affidavit suggest that he acted promptly after he was instructed by the applicant, although he does not disclose when he was so instructed. But there is no information at all as to what the applicant's previous advocates did after the High Court ruling of 25<sup>th</sup> June, 2003.

For the above reasons I have to dismiss this application with costs

DATED AT DAR ES SALAAM this 18th day of March,

2005.

J.A. MROSO  
**JUSTICE OF APPEAL**

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

( S.A.N. WAMBURA )  
**SENIOR DEPUTY REGISTRAR**