

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

(CORAM: RAMADHANI, J.A., MSOFFE, J.A., And KAJI, J.A.)

CIVIL REFERENCE NO. 8 OF 2003

BETWEEN

**ABDALLAH SALANGA & 63 OTHERS.....
APPLICANTS**

VERSUS

**TANZANIA HARBOURS AUTHORITY.....
RESPONDENT**

**(Reference from the ruling of a single Judge of the
Court of Appeal of Tanzania at Dar es Salaam)**

(Mroso, J.A.)

**dated the 24th day of April, 2003
in**

Civil Application No. 4 of 2001

RULING OF THE COURT

MSOFFE, J.A.:

This is a reference from a decision of a single judge of this Court, Mroso, J.A., given on 25/4/2003. In the decision the single judge dismissed the applicants' application for enlargement of time to file an appeal to this Court.

The facts giving rise to this reference may be stated very briefly. The applicants lost an appeal to the Court of Resident Magistrate with Extended Jurisdiction at Kisutu, Dar-es-Salaam on 24/12/99. On 7/1/2000 they filed a notice of appeal to this Court. The same court also granted them

leave to appeal to this Court on 5/9/2000. It is not clear if and when they applied for copies of proceedings, judgment and decree. At some later stage they realized that time within which to lodge the appeal had expired and hence the application the subject of this reference.

Reasons given by the applicants for the failure to appeal within time were three-fold: First, a labour officer represented them in the lower courts and only to realize later that he had no locus to appear in this Court hence they had to find an advocate for that purpose. Second, because of financial constraints much time was spent in finding an advocate to represent them in an appeal. Third, a lot of time and money had to be spent in preparing the record of appeal.

The single judge considered the above reasons at length. In the end, he was satisfied that they were not sufficient to grant the application in question.

The crucial issue in this reference is whether there is sufficient material upon which the single judge could be faulted.

Mr. Maleta, learned advocate, appeared for the applicants in the application. He is also advocating for them

in this reference. His oral submission to us was essentially a repetition of the submission he made to the single judge at the hearing of the application in question. In brief, the thrust of his oral submission was that the reasons advanced to the single judge were reasonable and sufficient and that the said judge should have found that much. On top of the above general submission Mr. Maleta came up with the following point that was never canvassed in the application before the single judge:- That the crucial issue facing the applicants was not really lack of financial resources. Rather, since they were scattered throughout the country a lot of time was spent in organizing themselves for the intended appeal.

On the other hand Mr. Mchome, learned advocate, appeared for the respondent. His submission was basically that no sufficient grounds have been advanced to fault the single judge. At best, according to him, learned counsel for the applicants merely repeated the grounds advanced before the single judge. He went on to urge the following other points:- One, the applicants preferred another matter before the Industrial Court where they engaged counsel which is an indication that they gave preference to the other matter in total disregard of their quest to pursue the intended appeal within time. Two, the available record does not show when the labour officer realized that he could not appear before this Court. That information, he went on to

submit, would be vital for purposes of computing time. Three, if the applicants were unable to prepare and file a record of appeal within time due to financial constraints they could have asked the Registrar to prepare a record for them in terms of Rule 122 (1).

We have given careful thought to the arguments for and against the reference. In the end, we are satisfied that the single judge was justified in holding that no sufficient reasons were advanced to explain away the delay in appealing within time. For example, this is how the single judge reasoned on the issue of financial constraints:-

“One of the reasons which was given was that the applicants faced financial constraints to find an advocate to prosecute the appeal. It was said that the applicants were retired people who had no money. But, with respect, that is not saying much. Living in retirement does not necessarily mean that one has no money with which to engage an advocate. There are people who are not engaged in salaried employment who are quite well to do. The applicants are 64 in number and it

cannot be generalized that all of them were impecunious merely because they were no longer being paid salaries by their erstwhile employer. At any rate, as stated by Mr. Mbuna, they were in fact able to engage an advocate to prosecute their case in the Industrial Court of Tanzania during the time when they were expected to prosecute their intended appeal to this Court. It is that same advocate who is now representing them before me.”

On time being spent in preparing a record of appeal the single judge reasoned as follows –

“The other reason which was given in the affidavit in support of the applicants’ application about a lot of time having been spent preparing for the record of appeal is hardly a plausible reason. It is assumed that the record of appeal was prepared by the applicants’ advocate. It is not disclosed how long it took to prepare it. If inordinate time was spent the advocate should have filed an

affidavit to explain what special difficulties he faced which necessitated the spending of “a lot of time.” If the preparation of the record of appeal demanded much money as claimed, it was not alleged that it was beyond the means of all the 64 applicants. As already said it has not been claimed that all the applicants are impecunious as a result of losing their salaried employment.”

Surely we find nothing to fault the single judge in his reasoning above. We may also add here that in fact Mr. Maleta has not been able to fault the single judge on the above reasoning. As correctly stated by Mr. Mchome, Mr. Maleta merely repeated his submission before the single judge without much more.

Mr. Maleta’s other point that at the centre of the difficulty was the problem encountered by the applicants in organizing themselves within time since they were scattered throughout the country, has to be discussed here in brief. With respect, the point cannot be raised at this stage. The point was never deponed in the affidavit in support of the application before the single judge. For that matter, the

single judge could not have considered it. In the same vein, the point cannot be canvassed in this reference.

We are satisfied that the reference has no merit. It is accordingly dismissed with costs.

DATED at DAR ES SALAAM this 02nd day of May, 2005.

A.S.L. RAMADHANI
JUSTICE OF APPEAL

J.H. MSOFFE
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR