

**IN THE COURT OF APPEAL OF TANZANIA  
AT ZANZIBAR**

**CIVIL APPLICATION NO. 2 OF 2006**

**Haidar Thabit Kombo & 10 Others AS ..... APPLICANTS**

**VERSUS**

**1. Abbas Khatib Haji  
2. Salum Rashid Abdulla  
RESPONDENTS  
3. Secretary, W & T Commission AS**

}  
.....

**(Application for extension of time to serve both the Notice of Appeal and a copy of the letter to the Registrar applying for copies of proceedings, judgment and decree or order from the decision of the High Court for Zanzibar at Vuga)**

**(Kihio, J.)**

**dated the 19<sup>th</sup> day of July, 2005  
in  
H/Court Civil Case No. 43 of 2002**

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**R U L I N G**

**1 & 13 November 2006**

**Mroso, J.A.:**

This is an application by a Notice of Motion under Rule 8 of the Court Rules, 1979 (The Rules) for extension of time to serve both the Notice of Appeal and a copy of the letter to the Registrar applying for copies of proceedings, judgment and decree or order on the first and second respondents. The affidavit in support of the application was sworn by the first applicant, Haidar Thabit

Kombo, but the application is shown to relate to 10 other applicants. Mr. Patel, learned advocate, represents the applicants while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are represented by Mr. Mbwezeleni, learned advocate, and the 3<sup>rd</sup> Respondent is represented at the hearing by Ms. Fatma Saleh Amour assisted by Mr. Hassani Alhaji, both learned State Attorneys.

The affidavit of Haidar Thabit Kombo says that whereas the third respondent was served with the two documents in time, service on the first and second respondents was done 8 days out of time, hence the application for extension of time. The main reason for the failure to serve those two respondents within time was the difficulty the first respondent encountered in finding those respondents for service. He made frequent trips by bicycle, all totaling over 100 kilometres, before he could finally find persons who could accept service on behalf of those respondents. No affidavit in reply was filed by the respondents to dispute the facts deponed by the first applicant.

Although the first applicant's affidavit was not challenged on the facts, its legal validity was challenged by the counsel for the respondents. Mr. Mbwezeleni questioned the representative status of the affidavit by the first applicant. He said that nowhere in the affidavit of the first applicant is it claimed that the first applicant was speaking for and on behalf of the other applicants or that he had authority from them to depone as he did in the affidavit. So, according to Mr. Mbwezeleni, the affidavit in the record is in respect of the first applicant only. The other applicants have not given any explanation why the two respondents were not served in time.

I think Mr. Mbwezeleni has a valid point here. It was not enough for the first applicant to say in his affidavit that he had conducted much of the trial of the suit on behalf of the other applicants or that he and the other applicants were poor and illiterate on matters of law and courts. Since the affidavit was drawn up by a lawyer (Mr. Patel), there could be no excuse for not clearly stating that he had authority of the other applicants to depone and swear the affidavit on their behalf.

In a ruling of the High Court Miscellaneous Civil Application No. 112 of 1994, **Augustino Meshack and five Others v. Makisi Nginana and two Others**, (unreported) the High Court said of an affidavit which was filed by one applicant on behalf of others –

“Where one of several applicants states that he is deposing in an affidavit on facts for and on behalf of the other applicants and on the hearing date the other applicants are present and do not dissociate themselves from the contents of the filed affidavit by one of themselves, the application will have been properly supported by affidavit and will be competent. The authorization from the other applicants will have been manifested by the other applicants knowing the contents of the affidavit and in not dissociating themselves from them.”

I think that is the correct position in law and the affidavit before the Court now is deficient in that it did not apply to the other ten applicants.

Mr. Mbwezeleni also contended that the Notice of Motion did not conform with Form A of the Rules because grounds for the application were not mentioned in the Notice of Motion itself but in the affidavit.

With respect, I do not take this to be a justified criticism. Before this Court was an application for extension of time. What was needed were reasons to explain away the delay satisfactorily. Such reasons would be evidential and would have to appear in the supporting affidavit. That was what the first applicant did when he gave his reasons in his affidavit for his failure to serve the documents on the two respondents within the time as required by Rule 77 (1) of the Rules. I am unable to see how those reasons (grounds) could have been given in the Notice of Motion.

Miss Fatma Amour said that the first applicant's affidavit was defective in that the jurat was allegedly not signed and dated by the applicant. That is not correct. The jurat was indeed signed by the applicant and dated 9<sup>th</sup> May, 2006.

Mr. Alhaji however raised a powerful point that the application was inordinately delayed. The applicant should have known that by 10<sup>th</sup> August, 2005 he was already late to comply with Rule 77 (1) of the Rules which required that within 7 days after lodging a notice of appeal he should serve the respondents with copies of the notice and of the letter to the Registrar applying for a copy of proceedings. He should, therefore, have acted with speed to apply for extension of time. That he did not do and he waited for his advocate to return to the country in late April, 2006 to prompt him to file this application on 9<sup>th</sup> May, 2006. That was over 9 months late. There is no acceptable explanation for the delay, especially after taking into account that Mr. Patel, in his own words, and in the words of the applicant in paragraph 3 of his affidavit which reads as follows:-

“3. On 27.7.2005, Mr. Patel handed me three copies of Annextures ‘A’ and ‘B’ (the Notice of Appeal and the letter to the Registrar applying for copies of proceedings) and specifically told me to serve these on

respondents within seven days i.e. by  
2.8.2005 as required by the C.A. Rules.”

So, the applicants knew that after 2<sup>nd</sup> August, 2005 time to comply with the requirements of the law will have expired. Then why did the first applicant wait for all those nine months before filing this application? I agree with Mr. Alhaji that the delay was inordinate and, mainly for this reason, this application must be refused. It is dismissed with costs.

DATED at ZANZIBAR this 13<sup>th</sup> day of November, 2006.

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

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

( S.M. RUMANYIKA )  
**DEPUTY REGISTRAR**