

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

CIVIL APPLICATION NO. 46 OF 2005

STANZIA STANLEY KESSY APPLICANT

VERSUS

- 1. THE REGISTERED TRUSTEES
OF AGRICULTURAL INPUTS TRUST FUND
2. ALPHONCE JOSEPH LYIMO
RESPONDENTS
3. AGRI CHEMIS LIMITED
4. EDWIN LYIMO**

**(Application for extension of time from the
decision of the High Court of Tanzania
at Dar es Salaam)**

(Masati, J.)

**dated the 5th day of November, 2004
in
Civil Case No. 101 of 2001**

R U L I N G

3 & 17 July 2006

LUBUVA, J.A.:

By notice of motion, the court is being moved for an order that:-

The time within which to give the notice of intention of appeal from the judgment and decree given against Stanley Kessy on 29/3/2003, Luanda, J. and the time

for taking all other steps necessary to prosecute the intended appeal be extended.

2

The application is supported by an affidavit duly sworn by Stanzia Kessy, the applicant.

From the documents laid before me, the undisputed facts giving rise to this matter are that in High Court Civil Case No. 101 of 2001, Stanley Kessy was the 4th Defendant. The suit had been instituted by the Registered Trustees of Agricultural Inputs Trust Fund. Stanley Kessy had applied for leave to defend the summary suit. The matter came before Luanda, J. who on 6.9.2002, ordered the parties to file written submissions and that judgment would be delivered on 6.3.2003. On 6.3.2003 the judgment was not delivered because Luanda, J. had been transferred to the High Court Registry at Bukoba.

From the court's notice board there was general information to the effect that cases which were dealt with by Luanda, J. would be reassigned and the parties would be notified. Meanwhile Stanley Kessy died. It also came to the knowledge of Mr. Shayo, learned counsel for the applicant, that the judgment had been delivered on 29.3.2003 in the presence of Mr. Ngatunga, learned counsel for the

respondent.

It was on 30/3/2004 when Mr. Shayo, learned counsel for the applicant became aware of the fact that the judgment had been delivered on 29.3.2003 against the applicant who was the 4th defendant in the summary suit, High Court Civil Case No. 101 of 2001. Consequently, the notice of intention to appeal was not lodged within the prescribed time provided under rule 61 (1) of the Court Rules, 1979. Hence, the application to the High Court for extension of time within which to file notice of appeal against the decision by Luanda, J. The application was made under section 11 (2) of the Appellate Jurisdiction Act, 1979: On 5.11.2004 the application was dismissed by Masati, J. upon the ground that a delay of 12 months was inordinate in the circumstances of the case.

Before me in this application, the applicant was represented by Mr. Shayo, learned counsel. On the other hand, for the respondents, the Registered Trustees of Agricultural Inputs Trust Fund, Mr. Ngatunga, learned counsel, appeared.

When the application was called on for hearing, upon application I made an order that the applicant, Stanzia

Kessy, the wife of Stanley Kessy be made a party to the proceedings under rule 54 (2) of the Court Rules, 1979 as a legal representative of the deceased Stanley Kessy. She had duly been appointed the administratrix of the estate of Stanley Kessy.

Elaborating some of the issues raised in the affidavit in support of the application, Mr. Shayo maintained that sufficient cause had been shown for the delay. If the circumstances of the case had been properly appreciated and considered by the High Court, the application for extension of time would have been granted. According to Mr. Shayo, on 29/3/2003 when the judgment was delivered, neither the applicant nor her counsel were present in court. However, on that day Mr. Ngatunga, counsel for the respondents was present in court. This aspect was conceded by Mr. Ngatunga as well. In that situation, there was no basis upon which to impugn laxity or lack of diligence in pursuing the matter promptly as held by the learned judge, Mr. Shayo submitted. Furthermore, Mr. Shayo said that it was also not controverted that the applicant became aware of the judgment on 30.3.2004. Thereafter, the applicant filed the application for extension of time by Chamber Summons on 1st April 2004, Mr. Shayo stressed.

On his part, Mr. Ngatunga, learned counsel for the respondents conceded the following: First, that the case was initially set for delivery of judgment on 6.3.2003. Second, that Luanda, J. was transferred to Bukoba, High Court Registry before 6.3.2003 and so the judgment was not delivered on 6.3.2003. Third, that although the parties were notified to come to the court on 7.3.2003 for delivery of the judgment, in fact there was no appearance in court on 7.3.2003. However, the parties were informed that judgment would be delivered on 31.3.2003. Fourth, there was no formal notification that the judgment would be delivered on 31.3.2003 and that Mr. Shayo for the applicant was not in court on the day the judgment was delivered. Under such circumstances, Mr. Ngatunga conceded as well that there was no lack of diligence on the part of the applicant. Nonetheless, counsel insisted that in view of the long delay in filing the notice of appeal, the application for extension of time in which to file notice of appeal was properly dismissed in the High Court.

In invoking the provisions of rule 8 of the Court Rules, 1979 the guiding principle in granting extension of time limited by the rules or any other law is for the court to be satisfied that sufficient cause has been shown for the delay. In this case, the issue is whether sufficient cause had been shown for the delay in filing the notice of appeal. It is

common ground that the judgment in the summary suit, High Court Civil Case No. 101 of 2001, subject of this application, was not delivered on 6.3.2003 as originally scheduled. Thereafter with the transfer of Luanda, J. to Bukoba High Court Registry there followed a period of uncertainty on when the judgment would be delivered. It was also common ground that eventually, the judgment was delivered on 29.3.2003 without any prior notification to the parties. While Mr. Ngatunga, learned counsel for the respondent was present in court that day, neither the applicant nor Mr. Shayo, her counsel appeared in court.

In that situation, if the applicant as Mr. Shayo asserts became aware of the judgment on 30.3.2004 and thereafter filed the application for extension of time in which to file notice of appeal in the High Court on 30.4.2004, would such constitute sufficient cause? For my part, I would think that the circumstances were such that sufficient cause had been shown. Having regard to the peculiar circumstances of the case namely that the date when the judgment was to be delivered was uncertain and that the judgment was delivered on 29.3.2003 without formal notification to the parties, it is inconceivable that lack of diligence can be attributed to the applicant or her counsel for the delay in filing notice of appeal. On this, Mr. Ngatunga, learned counsel for the respondent, correctly in my view, conceded.

There was another argument raised by Mr. Ngatunga, namely that lack of diligence could be attributed to the counsel for the applicant because it took so long to find out on 30.3.2004 that the judgment had been delivered on 29.3.2003. While I agree with the learned counsel that the period between 29.3.2003 and 30.3.2004 may well be comparatively long, but given the circumstances of the case from the time the judgment was initially scheduled to be delivered by Luanda, J. on 6.3.2003 until its delivery on 29.3.2003, I am unable to accept this contention. In fairness, I think the applicant took all the necessary steps with reasonable diligence soon after becoming aware of what had transpired.

All in all therefore, I am satisfied that considering the sequence of events from the time the judgment was initially scheduled for delivery on 6.3.2003 to the time it was delivered on 29.3.2003 without formal notice; the applicant's knowledge of the judgment having been delivered on 29/3/2004 and the filing of the application for extension of time to file the notice soon thereafter, sufficient cause had been shown for the delay.

Accordingly, the application for extension of time in which to file notice of appeal is granted. The applicant to file notice of appeal within 14 days from the date hereof.

DATED at DAR ES SALAAM this 17th day of July,
2006.

D.Z. LUBUVA
JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR