

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

CIVIL APPLICATION NO. 99 OF 2008

RUDOLF TEMBA AND ANOTHER APPLICANT

VERSUS

ZANZIBAR INSURANCE CORPORATION RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of
Tanzania, Commercial Division at Dar es Salaam)**

(Massati, J.)

dated the 9th day of October, 2007

in

Commercial Case No. 16 of 2007

RULING

23 September 22 October, 2008

OTHMAN, J.A.:

Under Rule 8 of the Court of Appeal Rules, 1979 (Rules) the application seeks an extension of time within which to file an application for leave to appeal to this Court against the decision and order of the High Court in the Commercial Case No. 16 of 2007 delivered on 9.10.2007. The application is supported by the affidavit

of Mr. Jerome J. Msemwa, learned advocate who also appeared for the applicant at the hearing on 23.09.2008.

The applicant duly served on 29.08.2008 entered no appearance.

Mr. Msemwa submitted that the application for leave to appeal to this Court was to have been filed within 14 days of 09.10.2007. That the delay was due to (a) the availability of copies of the High Court proceedings and drawn orders only on 15.02.2008; the earlier filing of an application for leave to appeal which was dismissed by this Court on 17.06.2008 as it was time barred; (c) that the main reason for which leave to appeal is being sought involves a point of law, that is, whether or not the High Court is entitled to dismiss a suit for want of prosecution on a day fixed for pretrial conference; and that the delay involved was reasonable and not undue as he is the only advocate in this Chambers who is permitted to appear before the Court.

It is well settled that the grant of an extension time to file an appeal out of time is within the discretionary power of the Court,

which is to be exercised judiciously, flexibly and on available material. Sufficient reason is to be put forward to explain the delay involved throughout the entire period concerned. Each case turns on its own set of circumstance and facts.

The decision of the High court refusing leave to appeal was delivered on 09.10.2007. Under Rule 43(b) an application to this Court for leave to appeal was to have been lodged within 14 days thereof. Copies of the High Court proceedings and drawn orders were sought by the applicant on 12.10.2007 and were ready for collection on 15.02.2008. This application was filed on 22.07.2008.

First, for clarity, which is most relevant to explain in an application such as the instant, seeking an extension of time is sufficient reason for the delay; not that there is a point of law on appeal that the applicant wishes to pursue. (See, **Shamji Haji V Nathalal Dharsi Hondocho and Others**, Civil Application No. 34 of 1972 ((E.A.C.A) (unreported); **Bhat v. Tejwant Singh** 1962 E.A.497.

That apart, **second**, considering the applicants immediate request to the High Court, on 12.10.2007, for copies of its proceedings and drawn orders and their availability as of 15.02.2008; the earlier dismissal by this Court of their time barred application for leave to appeal on 17.06.2008 in Misc Civil Application No. 51 of 2008, and the overall showing that the applicants had taken up and were continuously persuing the matter in Court, including the timely filing of their notice of appeal on 16.08.2007 against the decision and order of the High Court delivered on 07.08.2007, I am fully satisfied that the delay involved during all the relevant period has been accounted for by a showing of sufficient reason.


In the result and for the aforesaid reasons I would hereby grant an extension of time. The applicants are to lodge their application in Court within 14 days of the date of delivered by of this ruling. In the circumstance, there shall be no order as to costs. It is so ordered.

DATED at DAR ES SALAAM this 8th day of October, 2008.

M.C. OTHMAN
JUSTICE OF APPEAL

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




(P. B. KHADAY)
DEPUTY REGISTRAR
COURT OF APPEAL