

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

CIVIL APPLICATION NO. 178 OF 2008

AI OUTDOOR TANZANIA LIMITED AND ANOTHER.....APPLICANTS

VERSUS

ALLIANCE MEDIA TANZANIA LIMITED.....RESPONDENT

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

(Massati, J.)

Dated the 23rd day of February, 2007

in

Commercial Case No. 64 of 2005

RULING

23 February & 4 March, 2009

MUNUO, J.A.:

The applicants, M/S AI Outdoor Tanzania Ltd. and Another, through the services of Mr. Ringia, learned advocate, instituted the application for extension of time to appeal, under Rule 8 of the Court of Appeal Rules, 1979. The Notice of Motion has six grounds of seeking extension of time, namely:

- (i) That a previous application for extension of time failed in the High Court on the 25th November, 2005.*

- (ii) *That a previous appeal No. 41 of 2007 had been filed within time but was struck out due to a wrongly dated decree.*
- (iii) *That the Notice of Appeal in Civil Appeal No. 41 of 2007 had also been filed in time but was struck out when the incompetent Civil Appeal No. 41/2005 was struck out.*
- (iv) *Consequent to Civil Appeal No. 41 of 2007 being struck out, the applicants sought extension of time to reinstitute the appeal.*
- (v) *That it is in the interest of justice for the decision in Commercial Case No. 25 of 2005 to be challenged on appeal because it is problematic.*

- (vi) *That there is sufficient ground for granting the applicants extension of time to appeal.*

The application is supported by an affidavit deposed to by Mr. Kenneth Mkondya, the legal officer of the applicant company, reiterating the grounds of the Notice of Motion. At paragraph 7, Mr. Mkondya, states that it would be ironical to pay damages for property which was subsequently declared theirs. Hence the need to challenge the decision of the learned judge on appeal and thence the need to allow the application for extension of time.

Counsel for the applicants cited the case of **Fortunatus Masha versus William Shija and Another (1997) TLR 41 (CA)**. In **Masha's case**, the appeal was struck out under Rule 89 (i) (h) and (2) of the Court of Appeal Rules, 1979 on the ground that it was incompetent for want of a proper decree or order which ought to have been annexed to the Notice of Appeal.

Mr. Michael Ngalo, learned advocate for the respondent company, M/S Alliance Media Tanzania Ltd., resisted the application for extension of time. He adopted a counter-affidavit deposed to by Mark Andere urging the Court to withhold the sought extension of time because the applicant had not exercised due diligence in instituting Civil Appeal No. 41/2007 against the decision in Commercial Case No. 25 of 2005. The respondent maintained that the appeal was struck off because the appellants did not diligently lodge and pursue Civil Appeal No. 41 of 2007. He distinguished **Masha case** cited supra saying it was struck out because the striking out order was not annexed to the Notice of Appeal thereby rendering the appeal incompetent while in this application the issue is one of extension of the period of appeal. He further argued that there is no sufficient ground for granting extension of time so the application should be rejected. Counsel for the respondent cited Commercial Case No. 64 of 2005 involving the same parties wherein as shown at Page 3, the applicant sought extension of time to appeal to this Court. At Page 10 of typed judgment, Werema, J. held:

Since my jurisdiction to grant extension of time is based on my being satisfied that the applicant has given sufficient and good reasons to be entitled to the exercise of my discretion judiciously, and since I am not satisfied that the applicant has discharged that obligation as required by law, the orders sought are denied.....

For want of sufficient cause to grant extension of time, Mr. Ngalo urged the court to dismiss the application with costs.

The issue before me is whether there is sufficient ground for extending the period of appeal.

Had Civil Appeal No. 41 of 2007 not been struck out for being incompetent due to a wrongly dated decree, the present application would not have been instituted. The court is partly to blame for issuing wrongly dated decrees and orders, or issuing wrongly signed judgments, decrees and orders to parties. Counsel share the blame because they do not dilligently peruse the documents before

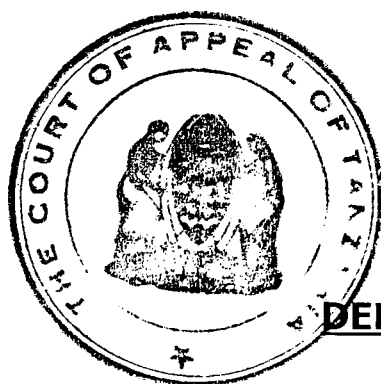
instituting appeals. In this regard, the parties should not lose their rights on mere technicalities. In the interest of justice, I find there is justifiable cause for extending the period of appeal.

I accordingly grant the application for extension of time. The Notice of Appeal to be filed by the 11th March 2009. As the trial court wrongly issued the defective decree, either party shall bear their costs for this application.

DATED at DAR ES SALAAM this 4th day of March, 2009.

E. N. MUNUO
JUSTICE OF APPEAL

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




(P. B. KHADAY)
DEPUTY REGISTRAR