

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KIMARO. J.A, MJASIRI, J.A. And MANDIA, J.A.)

CIVIL APPLICATION NO. 87 OF 2009

CRDB BANK LIMITED..... APPLICANT

And

1. GEORGE M. KILINDU
2. HON ATTORNEY GENERAL..... RESPONDENT'S

(Application for extension of time to Apply for revision from the
Decision of the High Court of Tanzania
at Dar es-Salaam)

(Bubeshi, J.)

Dated the 20th day of February, 2004
in
Civil Application No. 37 of 1998

.....
RULING OF THE COURT

18th JUNE, & 13th July 2010

MANDIA J.A:

The applicant CRDB BANK LTD, represented by Mr. H.H.H. Nyange, learned advocate, filed an application for extension of time to apply for revision. The Notice of Motion which the applicant filed was accompanied by an affidavit sworn by one Charles Abdiel Lawuo.

~~Arguing the application, Mr. H.H.H. Nyange, learned advocate,~~
gave a brief background to the application, which showed that the
first respondent was an employee of the applicant bank until the
~~1990s when he was declared redundant and his services terminated.~~

He filed a trade dispute in the then Industrial Court of Tanzania
which decided against him. The first respondent thereafter filed an
application for judicial review in the High Court of Tanzania which
decided partly in favour of him. The drawn order dated 18/7/2000
shows that the proceedings in the Industrial Court were declared null
and void and quashed but the application for reinstatement was
dismissed. The High Court however, rather oddly, recommended
that the applicant be paid "Monetary Compensation" after the parties
have sat down to negotiate the same.

~~After the "recommendation" by the High Court for the parties to~~
sit down and negotiate monetary compensation, there is nothing on
record to show that the parties actually sat and negotiated. On 10th
October, 2003, the advocate for the first respondent filed an

application for execution of decree which showed that the first respondent had obtained a decree from the High Court on 18th July, 2000, and that the amount decreed was sh. 193,267,180/= with interest of sh. 13,528,703/= making a total of sh. 206,795,883/=. In ~~the application for execution of decree the advocate for the first~~ respondent requested the court to attach and pay monies shown in the decree from the judgment debtor's account No. 992180901 [Samora Account] at the Bank of Tanzania. The Judgment debtor in the application is the present applicant. Again after the application for execution of decree was filed, the record is silent on whether the parties appeared before the court, but all the same on 12th December, 2003, the High Court of Tanzania issued a Garnishee Order which commanded the Governor of the Bank of Tanzania to deduct sh. 206,795,883/= and sh. 5000/= from Account number 992180901 [Samora Account] and immediately pay the deducted sum to the Registrar, High Court of Tanzania, Dar-es-Salaam.

On 28th January 2004 the applicant filed a Chamber Application in which he prayed that the order of attachment be lifted pending

hearing of an application for stay of execution. The Chamber Summons taken out by the applicant showed that he attempted to move the High Court to act under 0.21 Rule 24 and Section 95 of the Civil Procedure Act, Chapter 33 R.E. 2002. In an undated ruling the High Court decided 0.21 Rule 24 as well as Section 95 of the Civil Procedure Act were in applicable and also that the High Court can not sit in appeal against its own order, and dismissed the application. As we said earlier, the ruling dismissing the application is undated, but the drawn order signed by the District Registrar shows that the application was determined on 20th February, 2004.

Mr. H.H.H Nyange, learned advocate, put up the argument that on learning of the execution of the decree against the applicant he put up various efforts in the form of Civil Case 37 of 1998, Civil Application 149 of 2006, Civil Application No. 162 of 2006 and Civil Appeal No. 137/2008 in an effort to redress the complaint arising from the decision of the High Court allowing the execution of decree through the garnishee order, but all his efforts collapsed because he was pursuing the wrong course in all his efforts. He pressed home

the point that his quest for seeking extension is based on the premise that the execution proceedings in the High Court were fraught with illegality and that where there is illegality the court can grant extension of time. He prayed that the application be allowed.

In reply to the address by Mr. Nyange, Mr. Mwezi Mhango, learned advocate appearing for the first respondent argued that the applicant has not shown good cause for not acting within sixty days of the offending order. He went on to inform the court that the applicant had filed and withdrawn several applications after realising that he was pursuing the wrong course in law. Mr. Mwezi Mhango, learned advocate argued that ignorance of the law is not sufficient cause for delay. He prayed that the application be dismissed with costs.

On his part Mr. Pius Mboya, learned Senior State Attorney appearing on behalf of the second respondent, argued that the applicant has not given cause for the delay from 2004 to 2010 which is six years, and at best counsel for the applicant pleaded negligence

be dismissed with costs.

We have gone through all the arguments presented by the learned advocates on both sides. We are persuaded, as a matter of fact, that the applicant learned of the existence of the garnishee order at least from 15th December, 2003, when Mr. Charles Zabdiel Lawao swore an affidavit in which he makes reference to the garnishee order. We also find, as a matter of fact, that it took the applicant the time from December, 2003 to 4th August, 2009, when he filed the present Notice of Motion seeking extension of time to file an application for revision – a time lag of about six years. We are satisfied that six years is an inordinately long time to take before one commences legal proceedings to redress a civil complaint. We take cognizance of the spirited efforts made by Mr. Nyange to file the numerous applications and appeals, all of which were false starts which ended in either withdrawals or being struck out. What comes out of all these efforts is an exhibition of negligence and, as pointed

out by both Mr. Mwezi Mhango, learned advocate, and Mr. Pius Mboya, learned Senior State Attorney, negligence is not sufficient cause for delay. In FRANK KIBANGA versus ACU LIMITED Civil Appeal No. 24 of 2003 this Court quoted, with approval, the case of ZEPHANIA LETASHU vs MURUO NDELAMIA, Civil Appeal No. 31 of 1998 (unreported) where it held thus:-

“ Carelessness or inadvertence on the part of litigants or their counsel cannot be accepted as sufficient explanation to move the Court’s hand in their favour

We are therefore satisfied that no sufficient cause has been given for the delay.

There is however a second aspect to this matter. In advertent as he was, Mr. H.H.H. Nyange, learned advocate, has, however, sufficiently demonstrated that there is a palpable case of illegality in the manner the execution proceedings were carried out in the High Court. There is need to show whether or not there was a sum

(ii) when the point at issue is one alleging illegality, of the decision being challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right.

(iii)

.....

(iv)
.....

Drawing strength from this position we grant the application.
~~The applicant is given extension of time to file his application for~~
revision of the execution proceedings. The application should be
~~filed within fourteen days of the delivery of this ruling. Since the~~
~~application succeeded only in part, each party to this application will~~
bear their own costs.

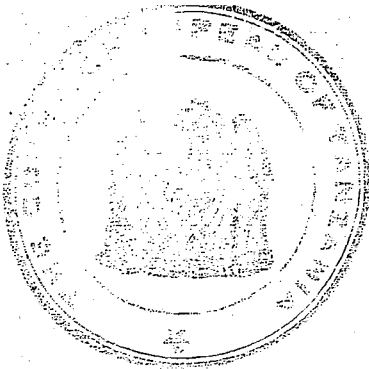
DATED at DAR ES SALAAM this 1st day of July, 2010

N.P. KIMARO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

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




J.S. Mgetta
DEPUTY REGISTRAR