

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

CIVIL APPLICATION NO. 9 OF 2009

DIRECTOR TILAPIA HOTEL LIMITED APPLICANT

VERSUS

ASHURA ABDULKADRI RESPONDENT

**(Arising out of the Judgment and Decree of the High Court of
Tanzania at Mwanza)**

(Nchalla, J.)

dated the 24th day of January, 2001

in

Civil Appeal No. 9 of 1999

R U L I N G

29 April & 5 May, 2010

BWANA, J.A.:

This matter does have a chequered history. This is so not because of the issues involved but, rather, because of the time it has taken to reach this stage.

Originally filed in Court in 1999, the High Court (per Nchalla, J.) eventually entered judgment in favour of the present Respondent on 22 April 2001.

Dissatisfied, the present Applicant attempted to appeal. The first hurdle it faced was that the decree extracted from the High Court judgment was signed by a District Registrar, thus offending the provisions of Order XX Rule 7 of the Civil Procedure Code (the CPC) which requires that first, the decree must be signed by the Judge (or Magistrate) or his/her successor in office. It also requires the date the judgment was delivered to tally with the date the Decree was extracted. Counsel for the Applicant conceded to the error. The appeal was therefore struck out by this Court on 15 March 2007 with leave to file fresh appeal within 30 days from the date of receipt of a properly signed decree but also subject to the limitation of time prescribed under the law.

A subsequent attempt by the Applicant met another hurdle. He filed a Chamber Application instead of a Notice of Motion under Rule 45 (1) of the then (1979) Court of Appeal Rules. That led this Court, once again to strike out the "application" on 15 May 2009 but with no order as to costs. Before that however, another attempt by the Applicant to file a Notice of Motion was struck out for non citing of proper provision of the law. That decision was delivered on 28 May

Counsel for the Applicant, the non citing of the proper provision of the law was caused "by the hurry to beat the deadline of 30 days which had been granted by the Court; otherwise it was not intentional or a noose to create hardship to the Respondent".

With due respect to Mr. Rugaimukamu's averment, one would wonder how a law firm of professionals could err three times on such preliminary points of law when it came to proper filing of documents cum applications before this Court or any court of law for that matter. During this long journey to have justice done in this suit, the Respondent, Ashura Abdulkadri and Decree holder, has been waiting for execution. She told this Court that the so called errors for all these ten years are deliberate attempts to deny her the rights to execute the decree in her favour.

This Court may grant extension of time for leave to file an appeal upon the Applicant showing sufficient reason. Three times "errors" of law and procedure – whether deliberate or genuine – cannot in my view, constitute sufficient reason as envisaged under

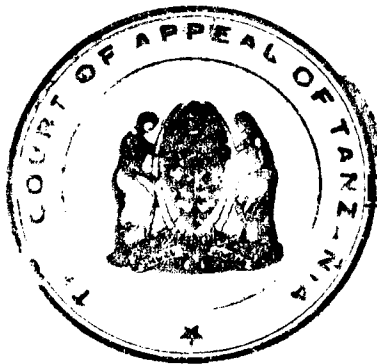
both the former Rule 8 of the Court of Appeal Rules, 1979 and the present Rule 10 of the 2009 Rules. The application therefore lacks merit.

Accordingly I dismiss this application with costs.

DATED at MWANZA this 5th day of May, 2010.

S. J. BWANA
JUSTICE OF APPEAL

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



(J. S. MGETTA)
DEPUTY REGISTRAR