

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

CIVIL APPLICATION NO. 5 OF 2009

JOSEPHINA A. KALALUAPPLICANT

VERSUS

ISAAC MICHAEL MALLYA..... RESPONDENT

**(Application for extension of time to file Notice of Intention
to Appeal to the Court of Appeal of Tanzania out of time
from the decision of the High Court of Tanzania
at Mwanza)**

(Masanche, J)

dated the 14th day of February, 2003

in

Civil Appeal No. 37 of 1997

.....

R U L I N G

29 April, & 5th May, 2010

MBAROUK, J.A.:

By a notice of motion lodged on 29-04-2009, the applicant Josephina A. Kalalu seeks under Rules 8 and 44 of the Court of Appeal Rules, 1979, for the following orders that:-

- (a) The Applicant be granted extension of time to file Notice of intention to Appeal to the Court of Appeal of Tanzania out of time.
- (b) The Applicant be granted extension of time to file Application for leave to appeal to Court of Appeal out of time.
- (c) Cost be in the cause.

The application is supported by an affidavit of Josephina A. Kalalu, the applicant.

The brief background leading to this application acquired through the applicant`s affidavital information is that: the applicant filed RMS Civil Case No. 121 of 1994 at Mwanza Resident Magistrate`s Court against Ainaman Kalalu and Isaac Mallya and won the case. Thereafter Isaac Mallya (the respondent) filed an appeal to the High Court against the applicant alone and won his appeal. Aggrieved, the applicant then filed Miscellaneous Civil Application No. 63 of 2003 before the High Court applying for an extension of time, but the same was dismissed on 5-6- 2007 for not giving sufficient reason for

delay. Another application of similar nature was dismissed by the High Court on 8-4-2009. Undaunted, the applicant has lodged this application.

At the hearing, Mr. Anthony Nasimire, learned advocate for the applicant prayed to adopt to what has been stated in the applicant's affidavit as part of his submission. He started his submission by pointing out that under Rule 44 of the Court of Appeal Rules, 1979 this Court has concurrent jurisdiction with the High court to entertain this application. In support of his argument he cited the case of **Augustus N. and DG Halikas V.M.K. Mithani and Mehboob Yusufuali Manji** (1984) TCR 74 (CA). He further submitted that even if the applicant has not specifically stated her reasons for the delay in her affidavit but according to the Ruling of the High Court which is part of the annexure to the applicant's affidavit, he said the reasons given by the applicant for the delay was that she was attending her sick mother. Mr. Nasimira said, that is a sufficient reason for his client to be granted an extension of time as she prayed.

On his part, the respondent who appeared in person had nothing more to submit apart from what he has stated in his counter affidavit. Hence he prayed to adopt to what he has stated therein.

It seems to me that, this is a straight forward application, where the applicant seeks for the orders of this Court to grant her an extension of time to file her notice of appeal and application for leave to appeal to the Court of Appeal out of time. Under Rule 8 of the Court of Appeal Rules, 1979, the Court has been conferred with the discretionary powers to grant extension of time after the expiration of the time set for filing a document. The said rule reads as follow:-

"The Court may for sufficient reason extend the time limited by these Rules or by any decision of the Court or of the High Court for the doing of any act authorized or required by the Rules whether before or after the expiration of that time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as reference to that time as to extended."

It is common knowledge that in order for the Court to exercise its discretionary power under Rule 8 of the Court of Appeal Rules, 1979, **sufficient reason** for the delay has to be shown. In the instant application, the affidavital information shows no reason which led to the applicant's delay in filing her notice of intention to appeal. Quoting item 4 of the applicants affidavit it is stated that:-

"That I was dissatisfied with the judgment of the High Court but for several reasons, I was out of time."

However, nowhere in the applicant's affidavit the applicant has mentioned those reasons which led to her delay in filing her notice of intention to appeal to this Court.

The record shows that the applicant at the High Court was late by four months to file her application. She gave the reason that she was attending to her sick mother. Thereafter her return, she delayed further while looking for money to engage an advocate. In dismissing the application, the High Court stated that:-

"Whole 4 months are not excusable! Her reasons are too lame to form sufficient or good reason for the delay."

Even if it is difficult to say with certainty what constitutes sufficient reason to warrant extension of time, but in the instant application, the applicant failed to show any reason which led to her delay in filing her notice of appeal and application for leave to appeal. As pointed out by Mr. Nasimire, the aspect of the reasons are only shown in the High Court ruling dated 5-6-2007.

In the circumstances, I remain with the considered opinion that as far as no reason was given for the delay in the instant application, hence I fail to use my discretion conferred to me under Rule 8 of the Court of Appeal Rules, 1979 to grant the applicant's application. In the event, this application is hereby dismissed with costs.

DATED at MWANZA this 30th day of May, 2010.

M. S. MBAROUK
JUSTICE OF APPEAL

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



A handwritten signature in black ink, appearing to read "J. S. MGETTA".

(J. S. MGETTA)
DEPUTY REGISTRAR