

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(CORAM: MUNUO, J. A., KILEO, J.A. And BWANA, J.A.)

CIVIL APPLICATION NO. 104 OF 2009

BETWEEN

FAROUK ABDALLA..... APPLICANT

AND

MOHAMED MAULID MUSSA.....RESPONDENT

**(Application for leave to file appeal out of time from the decision of
the High Court of Zanzibar
at Vuga)**

[Bakari, J.]

dated 30th May 2000

in

Civil Appeal No. 12 of 2000

RULING OF THE COURT

19TH & 26TH November 2010

KILEO, J. A.

The applicant Farouk Abdalla, by a Notice of Motion filed under Rule 8 of the Court of Appeal Rules, 2009 is seeking for this Court's leave to file an intended appeal out of time. The Notice of Motion which is supported by the affidavit of the applicant states as follows:

*"TAKE NOTICE THAT ON THE... DAY OF2009will move a judge of the Court for an order that **leave be granted for the applicant to file the intended appeal out of time** on the grounds that there is nothing on record to show that the applicant ever sat on his rights and that he diligently pursued his case save for an inadvertent error of his former advocate which cannot be allowed to take away his rights".*

Both the applicant and the respondent appeared before us without legal representation. The applicant urged us to grant his application going as far as saying that he was prevented from taking timely steps due to illness. This of course was something quite new which neither featured in the High Court nor in his affidavit in support of the application. The respondent asked us to dismiss the application which he claimed to be an abuse of the court process.

A brief account of the history of this matter shows that the applicant lost in Civil Appeal No.12 of 2000 of the High Court of Zanzibar. Having lost, he filed Civil Appeal No. 70 of 2001 in this Court. The appeal was

marked withdrawn in terms of Rule 84 (a). This was followed by an application in the High Court of Zanzibar in which the applicant sought extension of time to file a notice of appeal against the decision of the High Court dated 30th May of 2000 in Civil Appeal No. 12 of 2000. The application was granted, a fact which prompted the appellant to file Civil Appeal No. 62 of 2005. This appeal was struck out after it transpired that it was filed without the requisite leave. Thereafter the applicant went back to the High Court this time again seeking for leave to appeal to the Court of Appeal out of time. His application was dismissed (Bakari, J.) on 27/08/2009. Undaunted, the applicant has come to this Court with an application the contents of which have been shown above.

An appeal to this Court from Civil appeal No.12 of 2000 of the High Court of Zanzibar, having originated from a Regional Court required leave of either the High Court or the Court of Appeal in terms of section 5 (1) (c) of the Appellate Jurisdiction Act, 1979. It does not appear to us that the applicant has obtained such leave. What the applicant ought to have done after he was given extension of time to file notice of appeal was for him to

file an application for extension of time to apply for leave to appeal to the Court of Appeal. The application before Bakari, J. appears to be one for leave to appeal out of time not for extension of time to apply for leave to appeal. The two applications are different. Though in paragraph 3 of his affidavit the applicant stated that he went to the High Court to file an application for extension of time within which to file an application for leave to appeal, this is neither borne out in the Ruling of Bakari, J. which forms part of this record nor is it the prayer in the Notice of Motion before us. The Ruling of Bakari, J. states clearly that the application before him was one for leave to appeal to the Court of Appeal out of time. The prayer in the Notice of Motion before us is for an order that leave be granted for the applicant to file the intended appeal out of time. It is not an application for extension of time to file an application for leave to appeal.

As indicated above, the respondent argued that the application before us is an abuse of the court process. We agree with him. In Civil Appeal No.62 of 2005 it was pointed out to the applicant that up to the time of filing of the appeal the appellant had not obtained the required

leave. Up to now he does not appear to have applied for, and obtained such leave. The application before us for leave to appeal out of time is therefore totally misconceived.

In the result, we dismiss the application with costs.

DATED at **ZANZIBAR** this 26th Day of November 2010.

E. N. MUNUO
JUSTICE OF APPEAL

E. A. KILEO
JUSTICE OF APPEAL

S. J. BWANA
JUSTICE OF APPEAL

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



M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL