

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

CIVIL APPLICATION NO. 1 OF 2011

**M/S MWANANCHI ENGINEERING AND
CONSTRUCTING CORPORATION LIMITED. APPLICANT
VERSUS**

MR. SILVANO COPETI RESPONDENT

**(Application for extension of time to serve written submissions to the
respondent in an appeal from the decision of the High Court of Tanzania
(Commercial Division)
at Arusha)**

(Mruma, J.)

**dated the 10th day of July, 2009
in**

Commercial Case No. 7 of 2005

RULING

MSOFFE, J.A.:

This is an application for enlargement of time to serve the respondent with a copy of the written submissions in support of the appeal which has already been filed in this Court. The application is taken at the instance of Mr. Elvaison Erasmo Maro, learned advocate for the applicant, and is predicated upon the provisions of **Rule 106(1)** of the **Tanzania Court of Appeal Rules, 2009** (the **Rules**) requiring that written submissions be served upon the respondent within a period of 14 days from the date of the decision. It is evident from the affidavit deposed by

Mr. Maro and his written submissions in support of the application that the above mentioned appeal against the judgment and decree of High Court Commercial Case No. 7 of 2005 was filed on 29th October 2010. Under **Rule 106(1)** of the **Rules**, the present applicant had up to 29th December, 2010 to file the written submissions in support of the appeal. On 21st December, 2010 the written submissions were filed i.e. within time. Thereafter, several attempts were made to serve the respondent within the prescribed time but to no success. The attempts are well reflected as per the averments made under paragraphs 4, 5, 6, and 7 of Mr. Maro's affidavit thus:-

4. That on 27th December, 2011(sic) I physically visited the Respondents advocate's chamber for the purpose of serving the written submissions in support of appeal but unfortunately the chambers were closed and there was nobody around to provide any relevant information.

5. That on 3^d January, 2011 I went again for the same purpose but still the chambers were closed, I was able to find a gardener

named Mr. Dominick who informed me that, the chambers were closed for the Christmas holidays from 22nd day of December, 2010 to the 10th day of January, 2011.

6. That on the 10th day of January, 2011 I once again visited the said chambers only to find out that the same were still closed, the gardener Mr. Dominick informed me that on the 7th day of January, 2011 one of the clerk to M/S Ngalo & Company, Chambers had lost a daughter and that the burial ceremony was being held in Moshi on that day or on the following day.

7. That on 13th day of January, 2011, I made another attempt via e-mail to Advocate Modest Akida to find out as to when the chambers would be opened. Mr. Modest Akida who is one of the advocate practicing in that firm reacted to my email on the 14th

day of January, 2011, to confirm that the chambers were still closed.

At today's date of hearing Mr. Maro and Mr. Colman Ngalo, learned advocates, appeared on behalf of the applicant and the respondent, respectively. Mr. Ngalo was quick to point out that he had no objection to the application being granted as prayed.

Under **Rule 10** of the **Rules** the Court is mandated to extend time for the doing of any act authorized or required by the **Rules** upon **good cause** shown. After going through the affidavit and the written submissions in support of the application, and also after hearing Mr. Maro and Mr. Ngalo at today's date of hearing, I am satisfied that the application has merit in that good cause for extending time has been shown. Accordingly, under **Rule 10** time is hereby extended as prayed. Since in essence the written submissions will be deemed to have been filed today, in terms of **Rule 106(7)** of the **Rules**, the applicant is hereby directed to serve the respondent with a copy of the written submissions within a period of 14 (fourteen) days from today.

DATED at ARUSHA this 29th day of September, 2011.

J.H. MSOFFE
JUSTICE OF APPEAL

I certify that this is a true copy of the original



E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL