

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

(CORAM: RUTAKANGWA, J.A., MBAROUK, J.A., And BWANA, J.A.)

CIVIL APPEAL NO. 36 OF 2010

MWINYSHEHE A. MWINYISHEHEAPPELLANT

VERSUS

SECRETARY GENERAL BILAL MUSLIM MISSION RESPONDENT

(Appeal from the decision of the High Court of Zanzibar held at Vuga)

(Mshibe A. Bakari, J.)

Dated the 29th day of September, 2009

in

Civil Case No. 66 of 2002

RULING OF THE COURT

13th & 14th December, 2012

MBAROUK, J.A.:

When the appeal was called on for hearing, Mr. Salim Mnkonje, advocate for the Respondent, raised a preliminary objection to which its notice was filed earlier in terms of Rule 107(1) of the Court of Appeal Rules, 2009 (the Rules). The objection was to the effect that:-

1. *The appellants submissions are time barred for 'violating' Rule 106 (1) and (9) of the Tanzania*

Court of Appeal Rules which requires an Appellant to file his written submissions within 60 days from the date of filing the record of appeal and failure to do so in time for the Court to dismiss the appeal.”

At the hearing, Mr. Mnkonje submitted that, the Respondent waited to be served with the Appellant’s written submission but in vain. The deadline for lodging was on 23rd July, 2010, whereas the deadline for serving the respondent was 7th August, 2010. He further submitted that thereafter, the appellant administratively applied for extension of time before the Deputy Registrar of the Court and was granted with the same. He said, it was through that order of the Deputy Registrar which made them to be served with those written submissions. However, he contended that this Court through Civil Reference No. 6 of 2011 has decided that the Deputy Registrar ultra viresly used the powers of the Court by granting such extension of time. Mr. Mnkonje, then urged us to find that the appellant’s submissions were time barred for violating Rule 106 (1) and (9) of the Rule. For that reason, he prayed for the appeal to be dismissed. In support thereof, he cited to us, the decision of this

Court in **Masunga Mbegete & 2 Others v. The Hon. Attorney General & Another**, Civil Application No. 68 of 2010 (unreported)

On his part, Mr. Daimu Halfani, learned advocate for the appellant conceded to the defect not having filed their written submissions in time as per the requirements of Rule 106 (1) of the Rules. However, he urged the Court to invoke Rule 106 (19) of the Rules and find that there were exceptional circumstances which can make this Court not to exercise its discretion under Rule 106 (9) of the Rules leading to the dismissal of the appeal. Basically, he relied upon the illegalities which appeared in the Judgment of the High Court which need to be resolved by the Court of Appeal. For example the issue of the Registrar High Court delivering a judgment contrary to Order XXIII, Rule 1 and 3 of the Civil Procedure Decree. He also said that at page 220 of the record there is a chamber summons filed by the appellant as a lay person which was, in effect preliminary objection, and the High Court Judge rejected it for being time barred. But, he submitted that the preliminary objection was not determined. It is for those reasons which prompted them to file this appeal. All in all, he said no failure of justice is to be occasioned if the Court will allow the appeal to proceed for hearing

on merit. For that reason, he prayed for extension of time be granted so as to file their written submissions before the appeal is fixed for hearing.

In his rejoinder submissions, Mr. Mnkonje strongly opposed to what was submitted by Mr. Daimu and contended that, ignorance of the law is not a defence and judgment being problematic is not a ground for extension of time. He submitted that justice should be implemented by practicing the requirements of the law and not otherwise.

On our part, we are very much aware of the provisions of Rule 106 (9) of the Rules. We are also aware of the decision of this Court on the consequences of non compliance of the requirements of Rule 106 (1) of the Rules. For example, the decision in **Masunga Mbegete & 2 Others** (supra). However, we are of the opinion that Rule 106 (19) has given this Court wide discretion if exceptional circumstances are shown. Rule 106 (19) of the Rules states as follows:-

“(19) The Court may, where it considers the circumstances of an appeal or application to be exceptional, or that the hearing of an appeal must be accelerated in the interest of justice, waive compliance with the provisions of this Rule in so far as they relate to the preparation and filing of written submissions, either wholly or in part, or reduce the time limits specified in this Rule, to such extent as the Court may deem reasonable in the circumstances of the case.”

In the instant case we are of the view that exceptional circumstances have been shown in granting extension of time to file written submissions. Hence, in compliance with the discretion confirmed upon us under Rule 106 (19) of the Rules, and considering the acceleration of the hearing of appeal and the interest of justice, the appellant is hereby given thirty (30) days from the date of the delivery of this ruling to file his written submissions.

We have reached to that decision bearing in mind that each case has to be decided according to its circumstances and facts.

In the event, and for the reasons stated herein above, we overrule the preliminary objection with no order as to costs. Also having considered the matter is a long time case, we order the hearing of the appeal to be fixed in the next sessions at Dar es Salaam.

DATED at **ZANZIBAR** this 14th day of December, 2012.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

M.S. MBAROUK
JUSTICE OF APPEAL

S.J. BWANA
JUSTICE OF APPEAL

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




Z.A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL