

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 82 OF 2011**

**ABDALLAH S. NDOPE & OTHERS ..... APPLICANTS**

**VERSUS**

**NATIONAL HOUSING CORPORATION ..... RESPONDENT**

(Application for extension of time for preparation of Appeal record from the  
decision of the High Court of Tanzania at Dar es Salaam)

**(Jundu, J.)**

Dated the 7<sup>th</sup> day of October, 2004  
in  
**Civil Appeal No. 7 of 2003**

.....

**RULING**

26<sup>th</sup> March, 2012 & 11<sup>th</sup> February, 2013

**MANDIA, J.A.:**

By Notice of Motion lodged in this Court on 18<sup>th</sup> June, 2011, the applicant is moving this Court to grant the following orders, namely:-

- "1. *Extension of time be granted to appeal to this  
Court of Appeal out of time.*

2. *This Honourable Court issue extension of time to allow the appellants supply a copy of a letter applying for judgment, decree, proceedings and any other documents needed for preparation of appeal record and also have the said letter sent to the Registrar of the High Court of Tanzania.*
3. *Costs of this application abide the result of the said appeal."*

The applicant is represented by Mr. Dominic Kashumbugu, learned advocate, and the respondent is represented by Mr. Elisa Abel Msuya learned advocate, an affidavit sworn by one DOMINIC LADISLAUS KASHUMBUGU accompanied the Notice of Motion lodged by the applicant.

Arguing the merits of the application Mr. Kashumbugu gave a brief history of the matter which tended to show that the genesis of this application of High Court is Civil Appeal No. 21 of 2000 which was decided in favour of the respondents on 7/10/2004. Six days after the delivery of

the judgment i.e. on 13/10/2004, the late Ndolezi, advocate, who was representing the applicants filed a Notice of Appeal in the High Court.

Thereafter, we are not told exactly when, the applicants filed in the High Court of Tanzania, Dar es Salaam Registry, an application for extension of time within which to file an application for leave to appeal to the Court of Appeal. On 31/5/2006 Manento JK, (as he then was) dismissed the application for extension of time. Taking that the notice of Appeal was filed on 13/10/2004, this means the application for extension of time was dismissed one year and seven months later. Undeterred the applicant resorted to Rule 43 (b) of the Court of Appeal Rules, 1979 and attempted a second bite in this Court vide Civil Application No. 76 of 2006. A single Justice of this Court (Msoffe, J.A.) ruled the application to be incompetent for failure to attach the drawn order in the application dismissed by the High Court on 31/5/2006. The learned justice therefore struck out the application with costs on 3<sup>rd</sup> October, 2006.

After from the application for extension of time to file an application for leave to appeal, the applicants also filed an application for extension of time within which to serve the respondent with:-

1. A copy of the Notice of Appeal
2. A copy of the letter applying for a copy of proceedings.

The application Civil Application No. 21 of 2001, went before a single justice of this Court (Mrosso, J.A.) who dismissed the same with costs on 31/5/2011. The ruling of the single justice went on reference to this Court as Civil Reference No. 24 of 2006 was held to be incompetent and struck out instead of being dismissed. After the order of striking out Civil Application No. 21 of 2006, the applicant filed the present application. Mr. Dominic Kashumbugu, learned advocate, advances the reason that what made him to file the present application is the fact that the Court of Appeal in Civil Reference No. 24 of 2006 ordered that Civil Application No. 21 of 2006 be struck out as incompetent instead of being dismissed.

On his part Mr. Elisa Abel Msuya, learned advocate representing the respondent, argues that the applicants have not shown sufficient reason to

file an application for leave on the ground that no sufficient reason has been given for the delay to file the application in time. The applicants tried to have a second bite in the Court of Appeal in Civil Application No. 76 of 2006 but this attempt collapsed when the application was struck out by a single justice of this court for the reason that the applicants did not attach a copy of the drawn order of the ruling made by the High Court when it dismissed the application for extension of time within which to file an application for leave.

The question is, have the applicants advanced sufficient reason to allow extension of time by this Court? The affidavit by Mr. Dominic Ladislaus Kashumbugu, learned advocate, which has been filed in support of the Notice of Motion lodged in this Court on 18/7/2011 gives a history of how Civil Appeal No. 21 of 2000, Civil Application No. 76 of 2006 and Civil Reference No. 24 of 2004 were handled both by the High Court and this court, resulting in all of them being decided against the applicants. In paragraph 7 of his affidavit Mr. Dominic Ladislaus Kashumbugu, learned advocate says:-

*"7. That the application for leave to appeal has not proceeded as it got struck out and this is just and proper that what has been applied as the necessary papers now exist."*

In the Notice of Motion, however, the applicants are not seeking for extension of time to apply for leave as the learned advocate deposed in paragraph 7 of his affidavit. Instead, prayer No. I of the notice reads thus:-

*"1. Extension of time be granted to Appeal to this Court of Appeal out of time."*

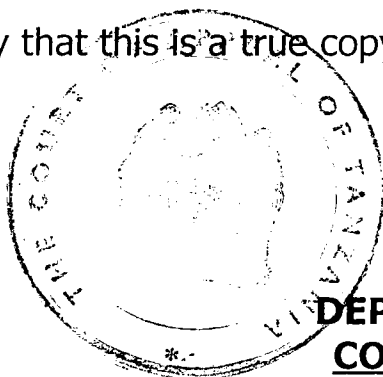
The prayer in the Notice of Motion necessarily refers to the Notice of Appeal whereby the applicants seek its extension, while paragraph 7 which is supposed to support prayer No. 1 talks about extension of time for leave to appeal. The Notice of Motion and the supporting affidavit are at variance and do not support each other. The history of dismissals and striking out of applications pointed out by Mr. Kashumbugu only points out

to inattention to the law and procedure, and as we all know, negligence and/or inattention by advocate cannot be sufficient reason for extending time – see **CALICO TEXTILE INDUSTRIES LTD vs PYRALI ESMAIL PREMJI** (1983) TLR 28 and **UMOJA GARAGE vs NATIONAL BANK OF COMMERCE** (1997) TLR 109. In the view of the above stated I am satisfied that no sufficient reason has been advanced to extend time. The application is hereby dismissed with costs.

**DATED at DAR ES SALAAM this 2<sup>nd</sup> day of January, 2013**

W. S. MANDIA  
**JUSTICE OF APPEAL**

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



Z. A. Maruma  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**