

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: KIMARO, J.A., BWANA J.A., And LUANDA, J.A.)**

**CIVIL REFERENCE NO. 4 OF 2011**

**SALUM AHMADA KUANGAIKA ..... APPLICANT**

**VERSUS**

**MOHAMED MUSSA SALUM ..... RESPONDENT**

**(Reference from the decision of a single Justice of the  
Court of Appeal of Tanzania)**

**(Kileo, J.A.)**

**dated the 4<sup>th</sup> day of July, 2011  
in  
Civil Application No. 85 of 2010**

**.....**

**RULING OF THE COURT**

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5<sup>th</sup> & 16<sup>th</sup> September, 2014

**BWANA, J.A.:**

This Reference was filed by Salum Ahmada Kuangaika, the applicant, pursuant to Rule 62 of the Court of Appeal Rules, 2009 (the Rules) following the decision of a single Justice of the Court dismissing his earlier application for extension of time to serve the respondent a notice of appeal

and a copy of a letter to the Registrar applying for copy of proceedings, judgment and decree.

The single Justice of Appeal dismissed the said application for want of written submissions in terms of Rule 106(1) of the Rules and for failure to give grounds for seeking extension of time to serve the documents to the respondent as required in terms of Rule 48 (1) of the Rules.

Aggrieved by that decision of the single Justice of the Court, the applicant preferred this Reference. His main ground for the reference is that the single Justice was "too harsh" in dismissing his application based on the lack of compliance with Rule 106 (1). He states further thus:-

*"Failure on the part of the applicant to file written submissions was not due to negligence or in advertence on his part, rather, it was due to him being a layman, also semi-educated. The applicant after filing for extension of time he was not aware of*

*the requirement for filing written submissions in terms of Rule 106(1) of the Court Rules, 2009 ...”*

The applicant through his written submission therefore prays for the leniency of the Court, in the interest of justice to reverse the decision of the single Justice and grant him the extension sought.

In response, the respondent controverts the applicant’s averments. He is of the view that since the applicant failed to comply with the mandatory provisions of Rule 106(1), the single Justice of Appeal was right in dismissing the application as the reasons advanced by the applicant were not sufficiently strong to make the Court grant the reliefs sought.

We are aware of the requirements of Rule 106. The obligation to file written submissions is mandatory under sub-rules (1) and (8) of Rule 106. However, sub-rules (9) and (10) of the said Rule defines the likely consequences for failure to file submissions. On the part of the applicant, the Court may dismiss the appeal/application. As regards the respondent, the Court may proceed to determine the appeal or application ex parte.

The discretion extended to the Court has to be applied judiciously, thus, not offending the spirit of Rule 106 as a whole and in the interest of justice in particular. The same applies to Rule 106 (19) where the Court may, in exceptional circumstances, dispense with the requirement to have written submissions. What has to be borne in mind are the dictates of justice. The said interests of justice however, in our considered view, should not be applied or invoked to defeat the very requirements of the law. Justice has to be in accordance with the law.

In the instant application, the applicant raises the excuse that he was ignorant of the provisions of Rule 106. It suffices to state herein the well settled principle of law that ignorance of the law is not an excuse, thus the Latin maxim *ignorantia legis neminem excusat*. Each and every person, let alone a litigant, is presumed to know the law involved or the tenets thereof. Since the applicant avers that he did not know that the Rules required him to file written submissions and or to do so within a prescribed period or that he did not know that requirement because he is a "semi-educated man", much as we may take note of his statement, regarding his educational background, we nevertheless uphold the old principle stated

above. Ignorance of the law is neither an excuse nor a ground to enable us invoke Rule 106 (19) of the Rules.

Accordingly we hold that the applicant has not advanced sufficient ground to make us depart from the reasoning and decision of the single Justice of the Court, in dismissing the earlier application for extension of time to serve the respondent. Therefore this Reference fails and it is dismissed in its entirety. We make no order as to costs.

DATED at DAR ES SALAAM this 9<sup>th</sup> day of September, 2014.




N. P. KIMARO  
**JUSTICE OF APPEAL**

S. J. BWANA  
**JUSTICE OF APPEAL**

B. M. LUANDA  
**JUSTICE OF APPEAL**

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

  
F. J. KABWE  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**