

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

CIVIL APPLICATION NO. 04 OF 2014

**KIJAKAZI AME HAJI.....APPLICANT
VERSUS
MEMBERS OF CULTURE MUSICAL CLUBRESPONDENT**

**(Application for extension of time and leave to the applicant to
lodge notice of Appeal out of time against the decree and
judgment of the High Court of Zanzibar,**

(Abdulahakim A. Issa,J.)

**Dated the 3rd day of October, 2012
in
Civil Appeal No. 19 of 2012**

RULING

1st & 7th December, 2015

MUSSA, J. A.:

This is an application seeking an extension of time within which to file a Notice of Appeal to this Court. The same has been taken out by a Notice of Motion which is predicated under Rule 10 and 83(1) and (2) of the Tanzania Court of Appeal Rules, 2009 ("the Rules"). The application is accompanied by an affidavit duly affirmed by the applicant.

From the accompanying affidavit, it comes to light that the applicant was the unsuccessful party in the High Court of Zanzibar Civil Appeal No. 19 of 2012. The decision of the High Court was pronounced on the 3rd October, 2012. The applicant eventually lodged an appeal before the Court on the 24th December, 2012 which was, incidentally, beyond the sixty days prescribed by Rule 90(1) of the Rules. As it were, the applicant had not previously sought to be issued with a certificate of delay which avails under the proviso to Rule 90(1) of the Rules.

Thus, when the appeal was called on for hearing on the 3rd December, 2013 the Court had no other option than to strike it out on account of incompetence (Mbarouk, Luanda and Juma, JJJ.A). In the aftermath, the applicant mounted an application before the High Court but, in the upshot, her quest was dismissed for lacking good cause and, hence the present application.

In her affidavit the applicant recites the factual background of the matter of which I have also recapitulated herein above. As for the grounds upon which the application is pegged, all what she averred is comprised in paragraph 9 which goes thus:-

" That, the applicant believes that has (sic) ample grounds of winning the intended appeal and therefore the need of the Court of appeal to extend the time of filing the Notice of Appeal so as enable (sic) the applicant to proceed and fulfill her intension".

At the hearing before me, the applicant was fending for herself, unrepresented, whereas the respondent had the services of Mr. Salim Mnkonge, learned Advocate. When asked to expound on her quest, the applicant fully adopted the Notice of Motion as well as the accompanying affidavit without more. For his part, Mr. Mnkonge resisted the application on account that in the accompanying affidavit the applicant simply replicated what she told the High Court; which telling was appropriately found by the Court below to be bereft of good cause. In his brief submission, the learned counsel for the respondent urged that applicant had not shown any good cause whatsoever to entitle herself to the extension of time.

In her rejoinder, the applicant did not have much to say apart from bemoaning that throughout the conduct of the proceedings giving rise to the application at hand, she was impeded by her complete ignorance of the legal procedures to the extent of not knowing the appropriate steps which she was supposed to take. That might have been the unfortunate reality but, while I cannot help expressing a feeling of sympathy with the applicant, one would have expected a diligent litigant in her shoes, as, indeed, it was in the best of her interests to make enquires about the essential steps.

To that extent, this matter will be judged on the basis of the material before me and, in that regard, I have dispassionately weighed the rival contentions of the parties herein and, for a start, it is instructive to explore on how the law stands on the subject of extension of time. At the level of the Court, the enabling provision is Rule 10 of the Rules which stipulates as hereunder:-

"The Court may, upon good cause being shown, extend the time limited by these rules or any decision of the High Court or tribunal, for the

doing of any act authorized or required by these rules whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time so extended”

To cull from the provision, it is trite that upon an application for extension of time, it is entirely upon the discretion of the Court to either grant or refuse it, the determinant consideration, being whether or not the inability or failure to take the desired step was occasioned by good cause. As to what amounts to “ good cause” this Court gave a hint in the unreported Civil Application No. 6 of 2001- **Tanga Cement Company Ltd Vs Jumanne Msanga and Another**; in the following words:-

“what amounts to sufficient reasons has not been defined. From decided cases, a number of factors has to be taken into account including whether or not the application has been brought promptly;

the absence of an valid explanation for the delay;

lack of diligence on the part of the applicant."

It is noteworthy that in the foregoing decision, the Court was grappling with the construction of the expression "*sufficient reasons*" as then comprised in Rule 8 of the old Rules. With the promulgation of the Rules the expression was changed to "*good cause*" but, I would venture to think, the factors which were singled out in **Tanga Cement** (supra) still hold. Nonetheless, the instances of good cause are not limited to the factors singled out in that case. In some other cases among the factors considered were the special or peculiar circumstances showing why the applicant should be allowed to argued the appeal out of time. Where, for instance, the point of issue is one alleging illegality of the decision being challenged the Court has a duty, even if it means extending the time for the purpose to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right (See **Principal Secretary, Ministry of Defence and National Service Vs Devram Valambia** [1992]TLR 182).

When all is said with regard to how the law stands on the subject, it is pertinent to observe that this application was necessitated by the order of the Court dated the 3rd day of December, 2013 through which the applicant's appeal was struck out for incompetence. To that end, I should observe, the issue whether or not this application is meritorious should be gauged from the particular steps taken by the applicant in the aftermath of the order of this court.

From the available proceedings, it is beyond question that soon after her appeal was struck out by the Court, on the 30th December, 2013 the applicant lodged her first quest for enlargement of time before the High Court which, however, as already intimated, was dismissed on the 3rd September, 2014 (Rabia H. Mohamed, J). Thereafter, on the 16th September, 2014 the applicant lodged the present application.

I have disclosed the dates of the material happenings to underscore the fact that right from the day when the appeal was struck out for incompetence, the applicant was throughout diligent

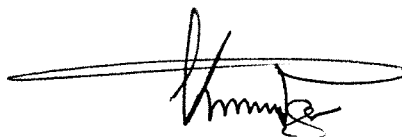
promptly lodged the application under my consideration.

In the circumstances, I am fully satisfied that good cause has been shown and, accordingly, the application is hereby granted. In the result, time is extended and the applicant should lodge the Notice of Appeal within thirty (30) days from the date of the delivery of this Ruling. Costs to follow the event in the intended appeal.

DATED at **ZANZIBAR** this 3rd day of December,2015.

K. M. MUSSA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', with a long horizontal flourish extending to the left.

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL