

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

CIVIL APPLICATION NO. 11 OF 2015

**LEONARD MAGESA.....APPLICANT
VERSUS
M/S OLAM (T) LTD..... RESPONDENT**

**(Application for extension of time within which to file Written Submissions in
Civil Appeal No. 117 of 2014)**

(De-Mello, J.)

**dated 20th day of February, 2014
in
(HC) Misc. Civil Application No. 15 of 2008**

RULING

4th & 5th June, 2015

JUMA, J.A.:

Before me is an application by notice of motion which was brought under Rules 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit of Leonard Magesa, the applicant. He is moving the Court to extend time within which to file his written submissions respect of Civil Appeal No. 117 of 2014 on the ground that he was prevented by his illness from filing his submissions on time.

The applicant avers that aggrieved with the decision of the High Court at Mwanza in Miscellaneous Civil Application No. 15 of 2008, he filed his Civil Appeal No. 117 of 2014 on 17/11/2014. In terms of Rules 106 (1) of the Rules, the applicant was required to file his written submissions in support of his appeal within the sixty days after filing his appeal that is by 16/1/2015. Although his written submissions were ready by 4/1/2015, he could not lodge it because he suffered from stroke which led to his hospitalization at Mwanza Regional Hospital where he was admitted. By 18/1/2015 when he was discharged, the sixty days had already expired. The applicant also averred that when the Civil Appeal No. 117 of 2014 was called for hearing on 17/03/2015, the Court, after overruling the objection which the respondent, M/S OLAM (T) LTD had raised, ordered the applicant to lodge formal application for extension of time to file his written submissions.

The application is strongly opposed by the respondent through an affidavit in reply which was taken out by Cosmos Sollo, the Zonal Accountant of the respondent. This deponent insisted that the applicant has not properly moved the Court because he did not cite Rule 48 (1). He

urged me to dismiss the application because the applicant has not shown sufficient reasons to justify an extension. He insisted that the applicant is not telling the truth by contending that his submissions were ready way back in January, 2015. If the written submissions were ready by 4/1/2015, he wondered why the applicant did not get someone to sign and file his submissions within time.

When this application was called out for hearing today, Mr. Paulin Rugaimukamu, learned advocate appeared for the respondent. The applicant who appeared in person could barely speak and preferred to rely on his written submissions. Mr. Rugaimukamu reiterated his contention that the instant application is not properly before the Court because the applicant has cited only Rule 10, and failed to cite Rule 48 (1) of the Court Rules. He also asked me to dismiss the applicant's explanation that his submissions were ready for filing by early January, 2015.

After hearing the submissions of the parties to this application, I propose to begin from the premise that the judicial discretion of the Court to extend time is predicated on his showing good cause under Rule 10 of the Court Rules. With due respect, I do not think non-citation of Rule 48

(1) will dissuade me from exercising my discretion. It seems to me that the import of Rule 48 (1) is to require those moving the Court by way of formal applications to cite specific rule under which that formal application is brought. Secondly, it requires the formal application to be by way of a notice of motion supported by affidavit. Thirdly, it requires the formal applicant to state the grounds for relief. In **Eliya Anderson vs. R.**, Criminal Application No. 2 of 2013 (unreported) the Court went to the extent of reiterating that failure to state the grounds for relief can be cured where these grounds are disclosed in supporting affidavit.

I will therefore decline to go along the distance which Mr. Rugaimukamu has proposed to me, to demand that the applicant should have in addition cited Rule 48 (1). As long as the applicant has complied with the three conditions governing formal applications he has sufficiently moved me to determine his application for extension of time under Rule 10.

The applicant averred that he failed to file his submission within time because of hypertension and stroke which led his hospitalization. Mr. Rugaimukamu does not dispute the illness and hospitalization of the

applicant. The applicant has also attached to his application a letter from the Medical Officer in Charge of Sekou Toure Regional Hospital. In **Debora Nalumasi vs. Marko Kamugisha Lwiza**, Civil Application No. 45 of 2011 (unreported) the Court was faced with similar application where illness prevented the applicant from complying with time frame within which to file written submissions. On account of illness, the Court was prepared to grant an extension when it stated:-

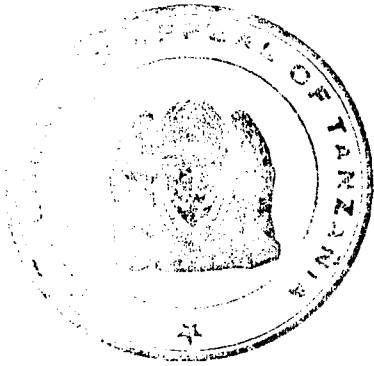
"...The provisions of Rule 106 (19) give the Court discretion, where it considers the circumstances of an application, such as this one, to be exceptional, to invoke the said discretion and in the interest of substantive justice (Rule 2), to waive compliance with the provisions of this Rule in so far as they relate to the filing of written submissions. Having considered such circumstances and in so far as this application is concerned, it is my considered view that illness of the applicant during the material time constituted a good cause."

In the final result, I am inclined to find that the applicant who was ill and hospitalized has shown good cause. The application is allowed and the applicant is granted thirty (30) days within which to file his written submissions in respect of the Civil Appeal No. 117 of 2014 pending in this Court. Costs shall abide the outcome of the intended appeal.

DATED at **MWANZA** this 4th day of June, 2015.

I. H. JUMA
JUSTICE OF APPEAL

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




Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL