

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO 183 OF 2015

TANZANIA PORTS AUTHORITY.....APPLICANT

VERSUS

AMI MOHAMED.....RESPONDENT

**(Application for extension of time to file from the decision of the
High Court of Tanzania at Dar es Salaam.)**

(Shangwa, J.)

Dated the 10th July, 2015

In

Civil Case No. 250 of 2003

RULING

02nd December, & 10th 2015

JUMA, J.A.:

The motion before me seeks an order of the Court to extend time to allow the applicant, Tanzania Ports Authority, to apply for an order of stay of the execution of the Judgment and Decree of the High Court at Dar es Salaam in Civil Case No. 250 of 2003 which Shangwa, J. delivered on 10th July, 2015. To move the Court, the applicant cited Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), and section 14 (1), (2) of the Law of Limitation Act, Cap. 89 R.E. 2002. To justify an order for extension of time, the applicant has preferred six grounds, two of which stand out.

The first ground explains that the applicant is already out of the time prescribed by the rules within which to apply for a stay of execution. The second ground explains that on 8th September, 2015 the applicant filed an application for stay of execution but this attempt was refused by the Registrar on the reason that the applicant had not shown the physical address of the respondent, Ami Mohamed.

One Kokutulage Kazaura, the Principal Legal Officer of the applicant, and Samson Kimwaga (an employee of FK Chambers) swore two supporting affidavits wherein they revisited the required essential steps they took towards lodging an appeal and at the same time staying the execution of the decree of the High Court. The essential events included writing a letter to the Registrar of the High Court to request for copies of the Judgment, Decree, proceedings and certified exhibits. They also explained how after filing a notice of appeal on 15th July, 2015 the applicant prepared its Notice of Motion dated 8th September, 2015 copying the same to the respondent (P.O. Box 25354 Dar es Salaam) and MSEMWA and COMPANY ADVOCATES (IT Plaza Building, 3rd Floor, Sokoine Drive/Garden Avenue). The following day, 9th September, 2015, the Registrar returned to Samson Kimwaga the Notice of Motion without any

endorsement thereon because the respondent's physical address was not indicated in that motion.

Attempts to serve MSEMWA and COMPANY ADVOCATES were unsuccessful because that firm of advocates which had earlier represented the respondent in the High Court; refused to accept the documents. The applicant, a letter dated 23rd July, 2015, communicated to the Registrar of the High Court the firm of learned advocates' refusal to accept documents. By the time the applicant successfully served the respondent on 21st September 2015, the sixty days within which to apply for a stay of execution had expired, hence the instant application for extension of time.

At the hearing of the application, Mr. Melkior Sanga, learned advocate appearing for the respondent did not oppose the prayer for extension of time. He however prayed that each side should bear its own costs. Prof. Angelo Mapunda, the learned advocate who appeared for the applicant did not press for costs.

I agree with the two learned Advocates that the applicant has shown good cause to deserve an extension of time. It is clear from the application that within seven days of the delivery of the judgment and decree of the trial High Court, the applicant applied to be supplied with certified copies of

proceedings, judgment and decree and also filed its notice of appeal on 15th July, 2015. Thereafter and well within the prescribed sixty days, the applicant brought its Notice of Motion dated 8th September, 2015 to seek a stay of execution. For some inexplicable reasons, the Registrar did not endorse that motion. In addition, the refusal by the MSEMWA and COMPANY ADVOCATES (who represented the respondent in the High Court) to accept service of court documents contributed to the delay. It is obviously a matter of great concern that of late, learned Advocates who are officers of the Court, have acquired the audacity to refuse to accept court documents.

In the upshot of the above, the applicant is granted a thirty (30) days leave within which to apply for an order of stay of execution. Costs shall abide the outcome of the application for stay. It is so ordered.

DATED at **DAR ES SALAAM** this 2nd day of December, 2015.

I.H. JUMA
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL