

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO.94 OF 2015**

**EDINA MWAKAPALILA.....APPLICANT  
VERSUS**

**FATUMA RASHID ..... RESPONDENT  
(Application for extension of time to file written submission in Civil Appeal  
No. 81 of 2013. From the judgment and decree of the High Court of Tanzania  
at Dar es Salaam)**

**(Mandia, J.)**

**Dated the 18<sup>th</sup> March, 2005**

**in**

**Civil Appeal No. 61 of 2001**  
-----

**RULING**

11<sup>th</sup> December, 2015 & 29<sup>th</sup> January, 2016

**MWARIJA, J.A.:**

By notice of motion filed on 08/05/2015, the applicant moved the Court praying to be granted extension of time to file written submission in support of her grounds of appeal in Civil Appeal No. 81 of 2013 (the appeal). The application which has been brought under rule 10 of the Tanzania Court of Appeal Rules, 2009 (hereinafter "the Rules") is supported by the affidavit of the applicant's Advocate, Mrs. Magdalena Kamugisha Rwebangira, learned counsel.

When the application was called on for hearing on 11/12/2015, it transpired that the applicant has not complied with rule 106(1) of the Rules requiring *inter alia* that an applicant in a civil application shall file

written submission in support of the application within 60 days after filing a notice of motion. The omission prompted Dr. Lamwai, learned counsel who appeared for the respondent, to pray for dismissal of the application under rule 106(9) of the Rules. He argued that although the Court has discretion under rule 106(9) of the Rules, since the applicant has not filed any application moving the Court to exercise that discretion, the application should be dismissed. He argued further that the provisions of sub-rule (19) of rule 106 of the Rules under which compliance with rule 106 (1) may be waived, cannot be applied in the absence of an application to that effect.

In response, Mrs. Rwechungura prayed to be granted time to remedy the situation by filing the submission. Relying on rule 106(19) of the Rules, the learned counsel argued that, under the circumstances pertaining to the appeal, the Court should consider to exercise its discretion and grant her prayer. According to her, the appeal involves issues concerning illegality of proceedings thus constituting a sufficient reason for grant of the prayer. She cited the cases of **Transport Equipments Ltd v. Devram Valambhia** (1993) TLR 91 and **VIP Engineering and Marketing Limited and 2 others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006

(CA) to emphasize her argument. The principle as stated in the **Transport Equipments case** (supra) is that:

*"..... where the point of law at issue is illegality or otherwise of the decision being challenged that by itself constitutes sufficient reason within the meaning of rule 8 of the Rules for extension of time."*

In rejoinder, Dr. Lamwai submitted that the cases cited by the counsel for the applicant do not apply to this application. He argued that the principle stated therein applies to applications for extension of time. He stressed that since there has been no application filed by the applicant to that effect, the principle is not applicable.

Sub-rule (19) of rule 106 of the Rules relied on by Mrs. Rwechungura in her prayer states as follows:

*"The court may, where it considers the circumstances of an appeal or application to be exceptional, or that the hearing of an appeal must be accelerated in the interest of justice, **waive compliance with the provisions of this Rule** in so far as they relate to the preparation and filing of written submissions, either wholly or in part, or reduce the time limits specified in this rule, to such extent as the Court may deem reasonable in the circumstances of the case."*

[Emphasis added]

In her submission, the learned counsel for the applicant invoked that provision seeking to be granted time to file the submission. She did

not pray for waiver of compliance with rule 106(1) of the Rules. For this reason, sub-rule (19) of rule 106 is with respect, not supportive of her prayer to be granted time to file the submission. I agree further with Dr. Lamwai that the underlying principle in the cases of **Transport Equipments** and **VIP Engineering** (supra) is not applicable under the circumstances of this application. The principle applies where a party seeks for an extension of time under rule 10 of the Rules (formally rule 8 cited in the above quoted holding in **Transport Equipments case**)

Even if it is to be taken that by her prayer, the learned counsel for the applicant was in essence, making an informal application praying to be granted extension of time to file the submission in respect of the present application, there is still no material upon which the Court can consider and decide her prayer. It was necessary for her to state the grounds upon which the application is based for the Court's decision on whether or not the delay was due to a sufficient cause. As stated in the case of **Godwin Ndewasi Karol Ishengoma v. Tanzania Audit Corporation** (1995) TLR 200.

*"... in order to justify extending time during which some steps in the procedure required to be taken there must be some material on which the court can exercise its discretion."*

Similarly, although the Court has discretion under sub-rules (9) and (19) of rule 106 of the Rules, as shown above, such discretion can only be exercised when there is an application made by a party. Since in this case, such an application does not exist, there is no material upon which the Court's discretion can be exercised.

Compliance with rule 106 (1) of the Rules is a mandatory requirement. The effect of its non-compliance is dismissal of an appeal or application. (See the case of **Mechmar Corporation (Malaysia) Berhard v VIP Engineering and Marketing Ltd.**, Civil Application No. 9 of 2001). In the event therefore, this application is hereby dismissed under rule 106 (9) of the Rules. Each party shall bear its own costs.

**DATED at DAR ES SALAAM this day 26<sup>th</sup> of January, 2016.**

A.G.MWARIJA  
**JUSTICE OF APPEAL**

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



  
E.F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**