

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CIVIL APPLICATION NO. 21 OF 2015

ALFRED FUNDI.....APPLICANT

VERSUS

- | | | |
|---|---|-------------------------|
| 1. GILED MANGO | } |RESPONDENTS |
| 2. MANAGING DIRECTOR SANDU COACH LTD. | | |
| 3. PHOENIX OF TANZANIA ASSUARANCE (T) LTD. | | |

(Application from the decision of the High Court of Tanzania at Mwanza)

(Bukuku, J.)

dated the 16th day of October, 2014

in

HC. Civil Appeal No. 30 of 2012

RULING

26th & 28th October, 2016

MUGASHA, J.A.:

This is an application for extension of time to file an appeal, brought under rule 10 of the Court of Appeal Rules, 2009 (the Rules).

The grounds in the motion are as follows: -

"(a). On 22 October, 2014 the applicant lodge a notice of appeal.

(b). 60 days within which to lodge an appeal expired on 20 December, 2014.

(c). The applicant obtained leave to appeal to the Court on 12th June, 2014 after expiry of the time prescribed for lodging the appeal."

The affidavit of **ALFRED FUNDI**, the applicant is in support of the application. At the hearing, the applicant appeared in person. Mr. Chama Matata, learned counsel represented the 2nd and 3rd respondents. He did not oppose the application but prayed to be spared costs.

The applicant adopted the contents of his affidavit and in his brief and short submission; he blamed the High Court for not determining his application for leave until after expiry of the prescribed time within which to file the appeal. He added that, despite making regular follow ups, the High Court delayed to avail him with the copy of the requisite leave.

In the affidavit, the applicant avers that, following dismissal of his appeal by the High Court, on 22/4/2014 he lodged a notice of appeal. He also applied for leave to appeal to the Court vide Misc. Civil Application No. 144 of 2014, which was concluded in his favour on 12/6/2016. However, it took him almost four months to be supplied with the copy of the leave on 5/10/2015 as evidenced by the Exchequer Receipt No. 6848009 (annexture 'E') to the present motion. When the applicant obtained leave, which was after the expiry of 60 days within which the applicant was required to file an appeal to the Court.

In an application for extension of time, where the applicant has demonstrated good cause, the Court is guided by rule 10 which states as follows:

*"The Court may, **upon good cause shown**, extend the time limited by these Rules or by 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 as so extended."*

In **HENRY MUYAGA vs. TTCL**, Application No. 8 of 2011 (unreported) the Court interpreted judicial discretion among other things that, the discretion of the Court to extend time under rule 10 is unfettered.

The applicant was delayed to file an appeal because he had not obtained requisite leave. Despite applying for it timely, it took one year for the High Court to determine the application for leave. Besides, it took another four months for the applicant to be served with a copy of the leave and soon thereafter, he lodged the present application in not less than 60 days. The applicant cannot be blamed for the delay when the application seeking leave remained pending before the High Court.

In terms of section 5(1) (c) of the Appellate Jurisdiction Act, [**CAP 141 RE.2002**], leave is a prerequisite document which must accompany a second appeal. In this regard, without leave the applicant could not have lodged an appeal to the Court.

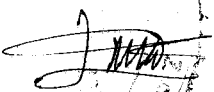
Since leave is a prerequisite document which must accompany a second appeal to the Court, the applicant could not file one without initially, obtaining leave. In my considered view, the applicant has demonstrated sufficient cause for the delay, to lodge the appeal to the Court because he had not obtained leave.

I hereby grant the application and the Memorandum of Appeal must be filed not later than sixty (60) days from the date of this order. I make no order as to costs.

DATED at **MWANZA** this 27th day of October, 2016.

S.E.A. MUGASHA
JUSTICE OF APPEAL

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


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL