

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

CIVIL APPLICATION NO. 8 OF 2016

PHILEMON MANG'EHE t/a BUKINE TRADERS APPLICANT

VERSUS

GESBO HEBRON BAJUTA RESPONDENT

(An application for extension of time to file an application for Reference)

(Mandia, J.A)

Dated 2nd day of July, 2014

in

Civil Application No. 32 of 2013

R U L I N G

11th & 20th October, 2016

MJASIRI, J.A.:

By a Notice of Motion filed under Rule 10 of the Tanzania Court of Appeal Rules, 2009, (the Court Rules) the applicant is moving the Court to grant extension of time to file an application for Civil Reference.

The background to this application is as follows:- The applicant filed an application for extension of time to file a notice of appeal before a single Judge of this Court (Mandia, J.A.). His application was struck out for being incompetent. The applicant then filed an application for extension of time to file a Reference.

His application was not objected to by the respondent and was therefore granted, (Kaijage, J.A.). He therefore went ahead to file an application for Reference. However the applicant failed to attach the order granting extension of time, along with the application. He was therefore compelled to withdraw the application in the absence of the order granting him extension of time. He is therefore now seeking another extension of time to file a Reference.

At the hearing of the application, the applicant was unrepresented and appeared in person while the respondent was represented by Mr. Elvaison Maro, learned advocate.

Mr. Mang'ehe on his part asked the Court to adopt his Notice of Motion and affidavit in support of his application. He submitted that he had already been granted an extension of time by a single Judge of this Court. He submitted that it was through mere oversight that the order granting him extension of time was not attached to his application for Reference. He contended that Mr. Maro's affidavit in reply did not make reference to his affidavit in support of his application. It was referring to the delay in filing the Reference. Mr. Mang'ehe stated that he has established good cause, as he has been taking action.

Mr. Maro on his part, strongly opposed the application. He submitted that under Rule 10, the Court has discretion to grant extension of time where good cause has been established. He contended that the applicant is seeking extension of time for the second time over the same matter. He has a duty to convince the Court that he is justified. He argued that the Court has made various decisions on this matter. He relied on the case of **Kalunga and Company Advocates v. National Bank of Commerce Limited** (2006) TLR 235, where it was stated that where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material upon which the Court may exercise the discretion given.

Mr. Maro contended that the applicant's affidavit in support of his application is a mere narration and it is not stating the grounds for extension. The applicant was legally represented in the application for Reference, therefore the negligence of his advocate does not constitute good cause. He made reference to the case of **Inspector Sadiki and Others v. Gerald Nkya** (1997) TLR 42. Mr. Maro also relied on **Thamboo Ratnam v. Thamboo Cumarasamy and Another** (1965) 1 WLR 8. He asked the Court to dismiss the application.

In reply the applicant lamented that not being a lawyer and not having any legal representation, he is not in a position to respond to the legal arguments raised by Mr. Maro. He submitted that he brought his application for extension of time immediately after the withdrawal of the application for Reference. He left matters in the hands of the Court.

After carefully reviewing the record and the submissions made by both parties, I wish to state as follows: - Rule 10 provides:

"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 so extended."

Black's Law Dictionary (Ninth Edition) defines good cause as legally sufficient reason. The term good cause is a relative one and is dependent upon the prevailing circumstances of each case. There are no hard and fast rules to what can constitute good cause.

What are the factors to be considered by the Court in the course of exercising its discretion? In the case of **Henry Muyaga v. Tanzania**

Telecommunication Company Ltd, Civil Application No. 8 of 2011 (unreported) which was cited in **Henry Leonard Maeda and Another v. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 at page 19, it was stated thus:-

"In considering an application under the rule, the courts may take into consideration, such factors as, the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted."

See - **The Attorney General v. Twiga Products Limited**, Civil Application No. 28 of 2008.

In the instant case, it is evident from the record that the applicant had already been granted an order for extension of time. However, the said order was not attached to his application for reference. Following the withdrawal of the application for reference on February, 12, 2016, he filed the subsequent application for extension of time on February 29, 2016, within seventeen (17) days from the date of the withdrawal.

Taking into consideration the circumstances surrounding this case and the fact that applicant has not been sitting idle, I am of the considered view that good cause has been established.

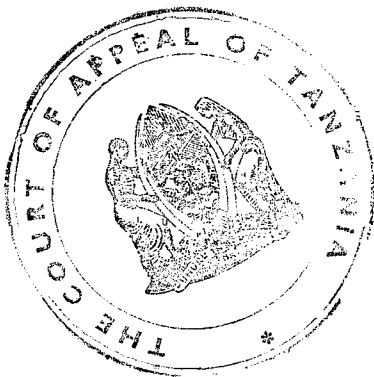
In the result, extension of time is hereby granted to the applicant to file his application for Reference. The application should be filed within a period of seven (7) days from the date of the delivery of this Ruling.

Order accordingly.

DATED at **ARUSHA** this 19th day of October, 2016.

S. MJASIRI
JUSTICE OF APPEAL

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




B. R. NYAKI
DEPUTY REGISTRAR
COURT OF APPEAL