

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

CIVIL APPLICATION NO. 11 OF 2015

**VALERIE MCGIVERN APPLICANT
VERSUS
SALIM FAKHRUDIN DALAL.....RESPONDENT**

**(Application for extension of time to apply for leave against the
decision of the High Court of Tanzania at Tanga)**

(Kalombola, J.)

Dated 10th day of July, 2014

in

Land Appeal No. 22 of 2011

RULING

29th June & 1st July, 2016

MJASIRI, J.A.:

This is an application for extension of time within which to lodge an application for leave to appeal against the decision of the High Court sitting at Tanga, where the applicant's appeal was dismissed following a preliminary objection that it was time barred. The said decision was delivered on July 10, 2014. The applicant being aggrieved by the decision of the High Court lodged a notice of appeal on July 17, 2014.

The application is made under Rule 10 of the Court of Appeal Rules, 2009 (the Court Rules). In terms of section 5(1)(c) of the Appellate Jurisdiction Act Cap 141 R.E. 2002 (the Act) leave of the High Court or this Court had to be sought and obtained first. The applicant's application for leave to the High Court was dismissed on March 4, 2015. The High Court found "*no point of law worthy of consideration by this Court*". The applicant did not leave the matter there. He filed an application to this Court. Under Rule 45(b) of the Tanzania Court of appeal Rules of 2009 (the Court Rules) the application had to be made within 14 days from the decision of the High Court. She failed to do so. The application was struck out by the Court for being out of time, on August 10, 2015.

The notice of motion instituting this application was lodged by Mr. Steven Sangawe Advocate on 10th September, 2015 and is supported by two affidavits one deposed to by Mr. Sangawe and the other by the applicant. The respondent filed an affidavit in reply, deposed by Mr. Mwita Waissaka, learned advocate for the respondent.

At the hearing of the application the applicant was represented by Mr. Steven Sangawe, learned advocate whereas the respondent had the services of Mr. Mwita Waissaka learned advocate. Both counsel asked the Court to adopt the affidavits filed in support of the application and the affidavit in reply as an integral part of their submission.

Mr. Sangawe, submitted that the applicant was furnished with a copy of the ruling of the High Court refusing the application for leave to appeal to this Court after the 14 days period had lapsed. This led to the striking out of Civil Application No. 6 of 2015 by the Court. According to Mr. Sangawe, the fact that the applicant did not receive the ruling of the High Court in time, despite the requirement to attach such ruling to the application for leave before the Court constituted good cause. He relied on paragraphs three (3) and four (4) of the applicant's affidavit. He submitted that he was under the false impression that leave was supposed to be sought after obtaining a copy of the ruling. He argued that from the time his application was rejected by the High Court, he was not idle and was actively pursuing the matter. Mr. Sangawe also argued that the point of law at issue is the illegality of the decision being challenged and this

constituted sufficient reason. He relied on the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambia** (1992) TLR 185.

Mr. Waissaka on his part strongly opposed the application. He contended that the applicant has not provided sufficient reasons. He submitted that the decision of the High Court refusing leave was made on March 4, 2015. However the notice of motion was filed in this Court on September 10, 2015. There is no explanation what the applicant was doing between March 4 and September 9, 2015. He stated that the applicant was required to account for every single day of delay in order to establish good cause. He submitted further that the circumstances in the **Valambia** case (supra) are different from the instant case and should be distinguished. According to him, no illegality has been established. He asked the Court to dismiss the application as the applicant has failed to establish good cause.

Mr. Sangawe in reply stated that the notice of motion has indeed been filed on September 10, 2015. However before that the applicant did

not stay idle. Immediately after the application for leave was refused by the High Court an application was filed to this Court, Civil Application No. 6 of 2015, which was struck out for being out of time.

It has not been established that a copy of the ruling and order of the High Court were ready for collection on the same date they were signed. It is also not in dispute that the applicant having lost the application for leave in the High Court filed an application before this Court. When the application for leave was dismissed by the Court for being time barred, the applicant filed the instant application after thirty (30) days seeking extension of time. A delay of thirty 30 days cannot be said to be inordinate under the circumstances.

Rule 10 of the Court Rules provides 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 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.”

[Emphasis provided].

The law is settled. This Court has held in a number of cases that no particular reason or reasons have been set out as standard sufficient reasons. What constitutes good cause cannot therefore be laid down by any hard and fast rules. The term good cause is a relative one and is dependant upon the circumstances of each individual case. See for instance **Abdalla Salanga and 63 Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001, **Citibank (Tanzania) Limited v. TTCL, TRA and Others**, Civil Application No. 97 of 2003 CAT (both unreported).

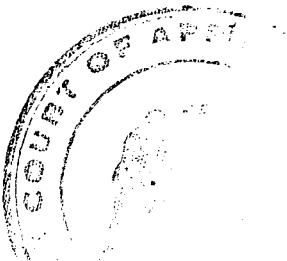
After taking into consideration what has been stated in the affidavits filed by both parties and the requirements under Rule 10 of the Court Rules. I am of the view that that good cause has been established.

For the foregoing reasons, I accordingly grant the applicant extension of time within which to apply for leave to appeal against the decision of the High Court at Tanga in Land Appeal No. 22 of 2011. The said application should be lodged within two weeks of the date of this decision. Costs to be in the cause.

DATED at **TANGA** this 30th day of June, 2016.

S. MJASIRI
JUSTICE OF APPEAL

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




P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL