

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 144 OF 2015

MATHIAS NDYUKI AND 15 OTHERS APPLICANTS
VERSUS

ATTORNEY GENERAL RESPONDENT

(Application for Extension of time to file Review from the
decision of the Court)

~~(Luhiva, J.A., Munuo, J.A. And Nsekela, J.A.)~~

Dated 30th day of April, 2008

In

Civil Appeal No. 32 of 2006

RULING

15th December, 2015 & 14th January, 2016

ORIYO, J.A.:

This is an application by way of a Notice of Motion under Rule 10 of the Court of Appeal Rules, 2009, (the Rules). The applicants are seeking an extension of time to file a Review of the judgment of the Court in Civil Appeal No. 32 of 2006. The Respondent Attorney General, in terms of Rule 56(1) of the Rules, filed an affidavit in reply.

Subsequent thereto, a notice of preliminary objection was lodged by the respondent, pegged on the applicants' failure to comply with the dictates of Rule 106 (1) of the Rules, to file written submissions within sixty days of lodging the notice of motion.

At the hearing, Mr. Ponziano Lukosi, learned Principal State Attorney, appeared for the respondent. The applicants had no legal representation by counsel. Whereas the first, second and third applicants appeared in person, the rest of the applicants were absent; save for the fourth applicant who was reported sick and was represented by his wife and the fifth applicant who was said to be deceased; and was represented by a daughter.

Regarding the point of preliminary objection; it was conceded to by the applicants for reasons of ignorance of the law and having no financial means to engage an advocate after being jobless for a long period of time.

However, the learned Principal State Attorney was quick to react with a prayer that appropriate orders be issued against the applicants because the reasons advanced were not valid.

Rule 106 (9) of the Court Rules states as follows:-

*"Where the appellant files the record of appeal or lodges the notice of motion and fails to file the written submissions **within sixty days** prescribed under this rule and there is no application for extension of time within which to file the*

*submissions, **the Court, may** dismiss the appeal or application.* (Emphasis supplied).

I have taken note that the respondent has raised the preliminary objection without citing an enabling provision of the law, (non-citation). The respondent has therefore failed to move the Court to consider the objection raised; thus rendering the same incompetent for non-citation. It is accordingly struck out.

In the absence of the preliminary objection, it is ordered that the application proceeds to be heard on merits.

Considering that the plight of the applicants date back to March 1997 when their employment was terminated, the Registrar is urged to fix the application for hearing on merit at the earliest opportunity available.

It is ordered.

DATED at DAR ES SALAAM this 14th day of January, 2016.

K.K. ORIYO
JUSTICE OF APPEAL

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


E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL