

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 122 OF 2013**

**1. FRANCIS NGOWI  
2. COCA COLA KWANZA (T) LTD .....APPLICANTS**

**VERSUS**

**GEOFFREY LAMAYANI ..... RESPONDENT**

**(Application for extension of time within which to file an Application for stay of execution from the decision of the High Court of Tanzania at Tanga.)**

**(Msuya, J.)**

**Dated the 22<sup>nd</sup> day of August, 2014**

**in**

**Civil Appeal No. 9 of 2011**

**RULING**

24<sup>th</sup> March & 4<sup>th</sup> April, 2016

**MWARIJA, J.A.:**

In this application, the applicants are seeking for an order granting them extension of time to file an application for stay of execution of the decree of the High Court of Tanzania at Tanga, passed in Civil Appeal No. 9 of 2015. The application which has been brought under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), is supported by an affidavit sworn by the applicants' counsel, Mr. Karoli Varelian Tarimo.

The applicants were the defendants in the District Court of Tanga in Civil Case No 41 of 2007. They were sued by the respondent who claimed

for damages of Tshs. 50,000,000/= as compensation for injuries sustained following a motor vehicle accident. He was knocked down by the 2<sup>nd</sup> applicant's motor vehicle. The 1<sup>st</sup> applicant was the driver of the vehicle which caused the accident. The District Court decided for the respondent and awarded him the claimed amount. The applicants were aggrieved. They unsuccessfully appealed to the High Court. Aggrieved further, they intended to appeal to this Court and according to the affidavit filed in support of the application, they filed a notice of intention to appeal. The applicants intended also to file an application for stay of execution. They could not do so within time hence this application.

Accordingly to the notice of motion, the ground upon which the extension of time is sought is that:-

*"... [the] applicants were not supplied with the copy of decree within time so as to meet the time limit for lodging the application before this Court."*

At the hearing of the application, Mr. Karoli Varelian Tarimo appeared for the applicants. On his part, the respondent neither appeared in person nor by a counsel. He did not also file a counter affidavit. By a letter dated

22.2.2016, his learned counsel, Mr. Alfred Akaro, informed the Court that his client did not intend to oppose the application.

Mr. Tarimo who had filed his written submission in support of the application in compliance with rule 106(1) of the Rules, did not have any oral arguments to make in addition to his written submission which he adopted. In the submission, the learned counsel reiterated his averments in the supporting affidavit and prayed to the Court to grant the application. He argued that the delay in filing the intended application is due to the omission by the court to supply a properly dated decree.

According to Mr. Tarimo, after the judgment of the High Court, he applied to be supplied with copies of proceedings, judgment and decree for the purpose of lodging an appeal and for filing an application for stay of execution of the decree. He contended further that he was supplied with the documents on 19.3.2015 but upon going through them, he discovered that the decree was wrongly dated in that, the same was dated 24.8.2015 instead of 22.8.2015 which is the date of the judgment.

As a result therefore, the learned counsel submitted, he applied for a properly dated copy of the decree and the same was later supplied to him on 4.5.2015. Understanding that he was already beyond the 60 days

limitation period for filing an application for stay of execution of a decree, he filed this application. He argued therefore that since the delay was caused by mistake of the court of supplying a copy of a wrongly dated decree, that factor constitutes a good cause. He thus prayed to the Court to grant the application.

As stated above, the ground upon which the applicants have based the application is the omission by the Court to issue a properly dated copy of the decree. Mr. Tarimo has annexed to his affidavit, copies of the letter in which he applied for the copies and also a copy of the wrongly dated decree which was supplied to him. According to his affidavit, he was supplied with a copy of the properly dated copy of the decree on 4.5.2016. These facts were not disputed.

Having considered the arguments made by the learned counsel, I agree that the applicants were supplied with a properly dated copy of the decree on 4.5.2016. I also agree with Mr. Tarimo that a copy of a decree was necessary for filing this application. In the case of **Permanent Secretary, Ministry of works & Anr. v. Ebeneza Massawe**, Civil

Application No. 113 of 2001 (unreported), cited by Mr. Tarimo, the Court after citing other previous decisions stated as follows:-

*"The position, therefore, is that an application for stay of execution has to be accompanied by a copy of the decree or extracted order."*

In that case, in one of the cited decisions, **Consolidated Holdings Corporation v. Rajani Industries Limited**, Civil Application No. 138 of 2002 (unreported), the Court stated *inter alia* that:-

*"I am in no doubt that application for stay of execution of decree, which is filed without being accompanied by a copy of the decree sought to be stayed, would be incompetent. The Court cannot be expected to consider staying a decree it has not seen."*

Since therefore, the applicants were not, until on 4.5.2015, supplied with a valid copy of the decree, they could not file the application. The delay was occasioned by the Court and for this reason, the application for extension of time has merit. In the case of **Tanzania Sewing Machines Company Limited v. Njake Enterprises Limited**, Civil Application No. 56 of 2007 a situation which is somehow similar to the facts of the present case was considered. The applicant had lodged an appeal within time but the same was struck out because the decree was wrongly signed by the

Registrar. It took time for the Court to issue a decree which was properly signed by the learned trial judge. In granting the application for extension of time lodged by the applicant, the court stated as follows:-

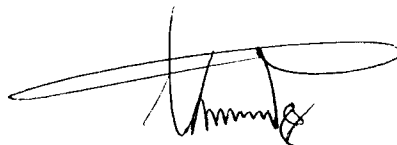
*"Under the circumstances, I find that the trial Court's omission to issue a properly signed decree to the applicant occasioned the delay in reinstating the Notice of Appeal. This, in my considered view, is sufficient ground for extending the period of appeal."*

On the basis of the foregoing reasons, I allow the application. The applicants are granted extension of time to file an application for stay of execution. The application to be filed within 14 days from the date of this ruling. Each party shall bear its own costs.

**DATED** at **DAR ES SALAAM** this 29<sup>th</sup> day of March, 2016.

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

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



J. R. KAHYOZA  
**REGISTRAR**  
**COURT OF APPEAL**