

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 62 OF 2015

TANZANIA CHINA FRIENDSHIP TEXTILE CO. LTDAPPLICANT
VERSUS
CHARLES KABWEZA & OTHERS RESPONDENTS
(Application for extension of time for filing an Application for leave to appeal
from the decision of the High Court of Tanzania
at Dar es Salaam.)

(Utamwa, J.)

Dated the 2nd day of December, 2014

in

Civil Revision No. 52 of 2008

RULING

25th February & 4th April, 2016

MWARIJA, J.A.:

The applicant has brought this application by a notice of motion praying for extension of time to file an application for leave to appeal. The application is supported by the affidavit of Butamo K. Philip, the applicant's Advocate. The ground upon which extension of time is sought is that:-

"... the applicant was not supplied with the drawn order and ruling in time to enable him (sic) to file the application in time as per the law."

At the hearing of the application, the applicant was represented by Mrs Butamo Philip, learned counsel while the respondents were represented by Ms. Miriam Majamba, learned counsel.

From the affidavits and the written submissions filed by the learned counsel for the parties, the applicant has come to this Court after its application in the High Court had been dismissed. It has therefore come to this Court for a second bite. Before the application proceeded to hearing, I required the learned counsel for the parties to address the Court on whether or not applicant has properly invoked the jurisdiction of the Court.

Mrs. Philip argued that by virtue of the provisions of S. 11 of the appellate Jurisdiction Act (Cap. 141 RE 2002) (the AJA), both the High Court and this Court are vested with the power of extending the time of filing applications including an application for extension of time to apply for leave to appeal. Since therefore the applicant was unsuccessful in the High Court, it has come to this Court by way of a second bite, the learned counsel argued. She added that an order of the High Court refusing to grant such and application is not appealable.

On her part, Ms. Majamba submitted that to her understanding, there is no provision which provides for a remedy of making a fresh application before the Court when an application for extension of time to file an application for leave to appeal is refused by the High Court. She argued therefore that the remedy is to appeal against the refusal order.

Having considered the issue, I agree with Mrs. Philip that the applicant was entitled to come to this Court for a second bite. S. 11 of the AJA states as follows:-

*“11 – (1) subject to subsection (2), the High Court or where an appeal lies from an subordinate Court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making **an application for leave to appeal** or for a certificate that the case is a fit case for appeal notwithstanding that the time for giving the notice or making the application has already expired.”*(Emphasis added).

Under rule 10 of the Rules, the Court is empowered to extend the time limited by the Rules or by any decision of the High Court or tribunal.

The Court therefore shares with the High Court, the power of extending time of filing applications stated under s. 11 of the AJA which includes the time of filing an application for leave to appeal.

According to rule 47 of the Rules an application which may be made in the High Court or the Court, shall first be made in the High Court. The provision states as follows:-

“47. Whenever application may be made either to the Court or the High Court, it shall in the first instance be made to the High Court or tribunal as the case may be, but in a criminal matter the Court, may in its discretion, on application or of its own motion give leave to appeal or extend the time for the doing of any act, notwithstanding the fact that no application had been made to the High Court.”

Since therefore an application for extension of time to file an application for leave to appeal is one of the application which may either be filed in the Court or the High Court and since the applicant was

unsuccessful in the High Court, it has properly come to the Court for a second bite.

With regard to the application, Mrs. Philip adopted the written submission which she had filed in support of the application. She argued that the delay in filing the application was due to the fact that the applicant was not supplied with copies of the ruling and drawn order (the copies) within time. According to the learned counsel after the High Court has delivered the ruling on 15/10/2010, she applied for the copies. She said that the same were not however supplied promptly; instead, the applicant obtained them on 9/8/2011 when the time for filing an application for leave to appeal had already expired. Citing the case of **Tanzania Sewing Machines Company Limited v. Njake Enterprises Limited**, Civil Application No. 56 of 2007, the learned counsel argued that, since the delay was caused by the Court's failure to supply the copies within the time limit prescribed for filing the application, the applicant had a good cause for failing to act within the prescribed time. Mrs. Philip prayed therefore that this application be granted.

Ms. Majamba who also adopted her written submission opposed the application. She argued that the delay was not due to a good cause because the ruling was ready for collection as from 15/10/2010, the date on which the same was signed by the learned High Court Judge. The learned counsel argued further that, since the drawn order is shown to have been extracted on 25/7/2011, the contention by the learned counsel for the applicant that the same was obtained on 26/10/2010 is not plausible. Pressing on this point, Ms. Majamba contended that the respondent obtained the copy on 26/10/2010. She argued further that the applicant delayed in filing the application after it had obtained the copies but the cause of the delay has not been explained. On these arguments, the respondent's counsel prayed that the application be dismissed.

In rejoinder, Mrs Philip reiterated her arguments that the delay in filing the application was caused by the Court's failure to supply the copies. She maintained that the delay was due to a good cause.

From the submissions made by the learned counsel for the parties, the issue for determination is a simple one, whether or not the applicant's delay to file the application was due to the delay by the court in supplying

the copies. It is not disputable that after the ruling of the High Court, by a letter dated 18/10/2010, the applicant's counsel applied for the copies. It is not disputed further that, out of the applied copies the drawn order was the last document to be issued by Court, the same having been extracted on 28/7/2011. According to the learned counsel for the applicant, the documents were obtained on 9/8/2011. She states as follows in her written submission:-

"that the applicant managed to get both the copy of ruling and drawn order on 9/8/2011, by that time the prescribed period for filing the aforesaid application for leave to appeal to the Court of Appeal had already expired."

The argument by learned counsel for the respondent is that the time started to run from 28/7/2011 because according to the drawn order, that is the day when the order was extracted and that therefore, it was ready for collection. That is a sound argument but the issue is whether the applicant was aware that the drawn order was ready for collection. The applicant applied for the copies on 18/10/2010. The ruling which is

intended to be appealed against was delivered on 15/10/2010. It therefore took the High Court over 14 months to extract the drawn order.

Despite that delay, there is no evidence that the applicant, who applied for *inter alia* a copy of that order for appeal purpose, was informed that the copy was ready for collection. The court had the duty of notifying the applicant that the copy was ready for collection. Since that was not done, it would be unjust to condemn the applicant for the delay in collecting the document . In the case of **Birr Company Ltd v. C. Weed Corporation**, ZNZ Civil Application No. 7 of 2003 (unreported), the learned counsel for the applicant had applied to the Court to strike out the notice of appeal. He asserted that the respondent had not taken essential steps despite the fact that a copy of the proceedings was ready for collection. There was however no evidence that the respondent was notified that the proceedings were ready for collection. The Court held as follows:

"He [The learned counsel for the applicant] has been unable to establish the date when the respondent became aware of the fact that the proceedings were ready for collection. This is when time starts to run for the institution of the

appeal. [See Civil Reference No. 10 of 1993]

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As stated above, in the case at hand, there is no evidence that the applicant was notified by the Court that the copies were ready for collection. I find therefore that the delay was due to a good cause. The application is thus hereby granted as prayed. The time of filing the intended application is extended for 14 days from the date of this ruling. Each party shall bear its own costs.

DATED at DAR ES SALAAM this 29th day of March, 2016.



A.G. MWARIJA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read "J. R. Kahyoza", is written over a horizontal line.

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL