

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 275 OF 2015

ROSEMARY STELLA JAIRO APPLICANT

VERSUS

DAVID KTTUNDY JAIRO..... RESPONDENT

**(Application for of extension of time within which the application to servè the respondent
notice of appeal and letter of the High Court of Tanzania at Dar es Salaam)**

(Muruke, J.)

Dated 30th day of April, 2014

In

Civil Case No. 79 of 2013

RULING

MMILLA, J.A.:

At today's hearing of this application, the counsel for both parties were in attendance. Ms. Cresencia Rwechungura, learned advocate appeared for the applicant, while Dr. Masumbuko Lamwai, learned advocate appeared for the respondent.

At the commencement of the hearing, the Court required Ms Rwechungura to account for failure to comply with the provisions of Rule 106 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) which requires a party who has lodged an application in Court to file written submission within a period of 60 days from the date of lodging the same. In response to that, Ms Rwechungura submitted that she did not comply

with the demands of that Rule because she was sick. She prayed to be allowed to withdraw the application.

On his part, Dr. Lamwai submitted that the requirement to file written submissions under Rule 106 (1) of the Rules is mandatory, non-compliance of which results in the dismissal of the application. He added that the prayer by the applicant's advocate withdraw the application is misconceived because it cannot be sought where there is non-compliance. He pressed the Court to dismiss the application.

It is certain that the requirement under Rule 106 (1) of the Rules is mandatory, and that as correctly submitted by Dr. Lamwai the Court cannot allow the request to mark the application withdrawn where the question of non compliance with the Rules has been raised. Thus, I decline to grant that prayer.

On the other hand, the Court may exercise its discretion under Rule 106 (19) of the Rules to waive the requirement to file the written submissions where it considers the circumstances of the appeal or application to exceptional, or that the hearing of an appeal or the application must be accelerated in the interest of justice.

In the circumstances of this matter learned counsel Rwechungura did advance any exceptional circumstances. She said she was sick but did not produce any evidence to support that assertion. That being the case, the Court has no basis on which to invoke the discretion under Rule 106 (19) of the Rules.

Ipsa jure, Rule 106 (9) of the Rules gives the Court discretion to dismiss the application for failure to comply with Rule 106 (1). In the circumstances of this application however, I think it will be just to strike it out instead of dismissing it, so that the applicant may have a second chance, if she wishes, to still do what she intended to do, subject to the law of limitation. Thus, the application is struck out with costs.

DATED at **DAR ES SALAAM** this 27th day of April, 2016.

B.M. MMILLA
JUSTICE OF APPEAL

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


B. R. NYAKI
DEPUTY REGISTRAR
COURT OF APPEAL