

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 219 OF 2015

DAVID MALILI.....APPLICANT

VERSUS

MWAZUMA RAMADHANI.....RESPONDENT

(Application for extension of time to file a memorandum of appeal against
the judgment of the High Court of Tanzania Land Division)

(Dr. Ndika, J.)

dated the 31st March, 2014

in

Misc. Land Appeal No. 48 of 2013

RULING

27th June & 11th July, 2016

KIMARO, J.A.:

The applicant lost the appeal he filed in the Land Division of the High Court of Tanzania in Land Appeal No.48 of 2013. Aggrieved by that decision he sought for leave to appeal which was granted. He filed this notice of motion under Rule 10 of the Court of Appeal Rules, 2009 in which he is seeking for extension of time to file a memorandum of appeal against the decision of the Land Division of the High Court of Tanzania. No grounds are given in the notice of motion. The accompanying affidavit of

the applicant sworn in support of the application says at paragraph four that he was delayed to file the appeal because documents necessary for filing the appeal, although applied for within time, were supplied after the time for filing the appeal in time had lapsed. The applicant wrote a letter requesting for the supply of a copy of the judgment and the ruling which granted him leave to appeal on 27th March, 2015. Despite sending to the Registrar of the Land Division a reminder letter for the supply of the documents, the same was not supplied until 10th September, 2015. The documents he requested have been annexed to the application as Annexure C1 (copy of the proceedings for the judgment he wants to impugn and the application for leave to appeal). Annexure C2 (a letter written on behalf of the applicant by the Legal and Human Rights Centre requesting for the supply of the said documents) and C3 (a certificate of delay excluding the period of the preparation of the said documents from 27th March to 10th September, 2015). The 10th September 2015 is the date the applicant was supplied with the documents mentioned. The application seeking for extension of time was filed on 28th October, 2015.

The notice of motion is filed under Rule 48 of the Court of Appeal Rules, 2009.

The respondent has in her affidavit in reply to the application opposed the application on the ground that the applicant has always been negligent in pursuing the proceedings in the subordinate court. She blamed him for being negligent and being the source of delay in obtaining justice.

After hearing the parties, perusing the documents filed by the parties and going through the relevant law involved in the determination of the application, I have the following to say. Rule 10 of the Court of Appeal Rules under which the application has been preferred requires the applicant to show good cause for the delay in failing to file the appeal in time. He was granted leave to file the appeal on 27th March 2015.

The Land Division of the High Court sat as a second appellate court. The matter between the parties started in the Ward Tribunal of Segerea. Among the documents required to form part of the record of appeal under Rule 96(2)(a) of the Court of Appeal Rules 2009 is the order if any, giving the appellant leave to appeal.

An appeal has to be instituted within sixty days. This is a requirement given by Rule 90(1) of the Court of Appeal Rules 2009. If the requested documents were supplied to the applicant in time, the applicant

was required to file the appeal by 27th May, 2015. The applicant produced evidence to show that he did not obtain the documents necessary for filing the appeal in time. Instead, as per the certificate of delay he supplied to the Court shows, the documents were supplied to him on 10th September, 2015.

Rule 10 of the Court of Appeal 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 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."

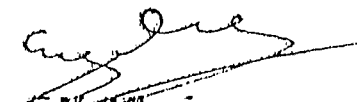
Under the circumstances the applicant has shown good cause for failing to file the appeal within sixty days as required by Rule 90 (11). Sixty days after 27th March 2015, he did not have the order granting him leave to appeal, the proceedings of the appeal and the judgment and the decree and the order granting him leave to appeal. The documents are necessary

for the filing of the appeal. When put on the scale of justice, the complaint by the respondent that the applicant has been the source of delay in what took place in the subordinate courts it has literally no weight to the application before the Court. In any event, the law provides for a right to appeal in the matter in contest between the parties. As the appellant has shown good cause for the delay in filing the appeal, he is granted extension of time to file the appeal out of time. In order to avoid further hurdles in pursuing the appeal the applicant must ensure that the provisions of Rule 96(2) of the Court of Appeal Rules, 2009 are strictly adhered to. The appeal must be filed within thirty (30) days after the delivery of this ruling.

DATED at DAR ES SALAAM this 30th day of June, 2016.

N.P. KIMARO
JUSTICE OF APPEAL

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


E.A. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL