

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

CIVIL APPLICATION NO. 170 OF 2015

NURU OMARY LIGALWIKE.....APPLICANT

VERSUS

KIPWELE E.O. NDUNGURU..... RESPONDENT

**(Application for Extension of time to apply for stay of
Execution from the decision of the High Court of Tanzania
at Dar es Salaam)**

(Ndika, J.)

**Dated 18th day of August, 2014
in
Land Case No. 12 of 2005**

RULING

20th June & 21st July, 2016

ORIYO, J.A.:

By a Notice of Motion lodged in Court under Rules 10, 11(2) (b), (c) and (e) of the Court Rules, 2009, the applicant is moving the Court for an extension of time to enable her make an application for a stay of execution of a Decree of the High Court, Land Division, delivered on 18th August 2014, in Land Case No. 12 of 2005.

The notice of motion is supported by an affidavit of the applicant, Nuru Omary Ligalwike. Basically, the applicant has advanced two main reasons for the delay. **One**, that she was ignorant of the procedures to be followed in lodging an appeal to the Court. **Two**, financial constraints; lack of support / cooperation from Mr. H.H. Mtanga, Advocates, who initially advocated for her but showed reluctance to initiate the appeal process, allegedly because she ran out of means to pay for legal fees.

Three- Economic stagnation and lack of finances to engage and pay an alternative advocate in place of the former advocates.

Further, by paragraph 11 of the affidavit, the applicant undertook:-

" to furnish security for the due performance of the decree in the due course of the proceedings....."

At the hearing of the application was Mr. Melkizedek Lutema, learned advocate for the respondent while Mr. Leonard Manyama, learned advocate appeared for the applicant.

Before delving into the issues; the subject matter of the application, Mr. Lutema, expressed his concern that the applicant's advocate did not file written submissions in support of his client's application; which contravened the dictates of rule 106(1) of the Court Rules. In response, Mr. Manyama, on his part readily conceded that he did not file the submissions due to inadvertence on his part. Obviously, Mr. Lutema was not satisfied that inadvertence by counsel constituted good reason for the omission, because the law, (Rule 106(1)), does not provide for inadvertence as a defence for failure to abide by the Rules. Alternatively, Mr. Lutema was of the view that Mr. Manyama was at liberty to apply for an extension of time as soon as he realized that he had defaulted to comply with the prescribed sixty (60) days Rule to file the written submissions in support.

Citing the decision of the Court in the case of **Mohamed Salum Vs Jumanne Omari Mapesa**, Civil appeal No. 158 of 2015 (unreported), where in similar circumstances a single Justice of the Court relying on previous decisions, held:-

" The Court will dismiss an application under Rule 106(9) unless exceptional circumstances are shown under Rule 106(19), for failure to file written submissions, in terms of Rule 106(1) of the Court Rules".

See also Court's decisions in **Mechmar Corporation (Malaysia) Berhard Vs VIP Engineering and Marketing Ltd**, Civil Application No. 9 of 2011; (also unreported).

It is now well settled, in terms of Rule 10 of the Court Rules 2009, that a decision whether or not to extend time is essentially **discretionary upon good cause shown**. However, such good cause must be capable of explaining away the delay; See **Unilever Tanzania Ltd Vs Said Sudi and 26 Others**, Civil Application No. 88/2013; **Tanzania Uniforms and Clothing Corporation Ltd Vs 1. Nirmal t/a Bhogal Metal Engineer 2. Sitel Singh**, Criminal Application No. 134 of 2015, (both unreported). The issue here is whether the applicant has shown **sufficiently good cause** for the delay.

Indeed the Court has powers under Rule 10 of the Court Rules, to extend the time limited by the rules or by any decision of the High Court or tribunal for the doing of any act authorized or required by the rules. The Court's discretion is exercisable only where **good cause** is shown, to justify the delay. In my view, the grounds set out in the Notice of Motion (supra) and the averments in the supporting affidavit explain away the delay.

In **Abdalla Salanga and 63 Others Vs Tanzania Harbour Authority**, Civil Application No. 4 of 2001, the Court made the following observation on the then Rule 8, 1979 Court Rules (currently rule 10 of 2009 Rules):-

*"Rule 8 of the Court Rules requires that an application for extension of time give sufficient reason. This Court in a number of cases has accepted certain reasons. **But no particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application... Sufficient reasons means***

reasons which convincingly explain away the delay to institute an appeal." (Emphasis supplied).

See also **Godfrey Anthony and Another Vs Republic**, Criminal Application No. 6 of 2008; **The Registered Trustees of the Glory of Christ Church**, Civil Application No. 185 of 2013; (both unreported).

However, in **Khalid Mwisongo Vs M/S Unitrans (T) Ltd, Civil Appeal No. 56 of 2011**, (unreported); the appellant defaulted to file written submissions within the prescribed period of sixty days, in terms of Rule 106(1) of the Court Rules. At the hearing, the respondent prayed that the application be dismissed under Rule 106(19) on that account. The Court overruled the prayer by the respondent when it stated:-

"As the failure to file written submission did not prejudice the case of either party, we find no merit in the preliminary objection".

The objection was consequently overruled with costs.

Having given due consideration to the rival submissions by the learned advocates for the parties, I am inclined to agree with Mr. Lutema that inadvertence, under normal circumstances, does not constitute sufficient cause for the Court to extend time under Rule 10 of the Court Rules. In the Court's decision in **Michael Lessani Vs John Eliafye** [1997] TLR 152 a single justice of the Court stated as follows:-

" ... although generally speaking a plea of inadvertence is not sufficient, nevertheless I think that extension of time may be granted upon such plea in certain cases, for example, where the party putting forward such plea is shown to have acted reasonably, diligently to discover the omission and upon such discovery, he acted promptly to seek remedy for it ".

In the circumstances under consideration, I am inclined to go along and accept the reasons advanced in the affidavit of **Nuru Omari Ligalwike** as constituting good cause for the delay. In the event, the application is accordingly granted. The application for


the extension of time to apply for stay of execution is granted.
The application for stay of execution to be lodged within thirty (30)
days of delivery of the ruling. Costs in the cause.

DATED at **DAR ES SALAAM** this 11st day of July, 2016

K.K. ORIYO
JUSTICE OF APPEAL

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




(T. K. Simba)
DEPUTY REGISTRAR
COURT OF APPEAL