

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LUANDA, J.A., MMILLA, J.A. And MZIRAY, J.A.)

CIVIL REFERENCE NO. 3 OF 2014

BANK OF TANZANIA APPLICANT

VERSUS

SAID A. MARINDA & 30 OTHERS RESPONDENT

**(Application for reference from the Decision of the Court of Appeal of
Tanzania at Dar es Salaam.)**

(Mandia, J.A.)

dated the 3rd day of March, 2014

in

Civil Application No. 150 of 2011

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RULING OF THE COURT

2nd August & 3rd October, 2016

LUANDA, J.A.:

This is a reference arising from a decision of a single Justice of the Court (Mandia, J.A.) in Civil Application No. 150 of 2011 who declined to extend time to enable the above named applicant file a notice of appeal out of time. The application before Mandia, J.A. was made under Rule 10 of the Court of Appeal Rules, 2009 (the Rules) after it was refused by the High Court of Tanzania (Mruke, J.). So, the applicant is attempting a "second bite" as commonly referred to.

Briefly the background to the matter is that the applicant is dissatisfied with the decision of the High Court of Tanzania (Dsm Registry) (Bubeshi, Oriyo and Mwaikugile, JJJ.) in Misc. Civil Cause No. 68 of 2002 whereby it quashed the decision of the Minister responsible for labour matters as well as the award of the Industrial Court Inquiry No. 3 of 1995 following an application for prerogative orders of certiorari and mandamus of which the Applicant and the Hon. Attorney General were the parties in those proceedings.

Dissatisfied with that decision, the applicant lodged an appeal in this Court vide Civil Appeal No. 42 of 2004. But that appeal was struck out on 10/8/2007 for being incompetent for having incorporated a defective drawn order. After the striking out of the appeal, the applicant started afresh the process of appeal by filing an application in the High Court, in terms of S. 11 of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the AJA) for extension of time to lodge a notice of appeal out of time on 28/9/2007 and not on 25/4/2008 as said by Mandia, J.A., a period of 48 days after the striking out of the appeal by this Court. Mruke, J. declined to grant the application. She dismissed it with costs to the respondents. The decision was handed down on 30/4/2009.

On 15/11/2011 a period of more than 2 years and six months after the decision of Mruke, J., the applicant filed an application as a second bite in this Court for extension of time to file notice of appeal out of time. Mandia, J.A. also declined to grant the application, hence the filing of this reference.

The parties in this application through their counsel, namely Mr. Senen Mponda and Mr. Barnaba Luguwa for the applicant and the respondent respectively argued their cases. On completion, we had reserved the ruling with anticipation to inform the parties the outcome at a later date. But in the course of discussing the matter, we discovered that there is one legal point which ought to have been placed before the advocates for their comments. The point of law is:- Whether the application for extension of time to file notice of appeal after it was refused by Mruke, J. which was filed after a period of 2 years and 6 months was filed in time. We accordingly directed the Registrar of the Court to re-summon the learned advocates to appear on 20/9/2016 and address us on that point. The Registrar complied with our directive. The learned counsel appeared on 20/9/2016 and addressed us on that point.

On his part Mr. Mponda told the Court that the application before Mandia, J.A. was made under Rule 10 of the Court of Appeal Rules, 2009 (the Rules) which allows a party to civil proceedings in this Court to apply for extension of time before or after the expiration of a prescribe time within which to take action, provided sufficient cause is shown. He went on to say, it is neither in the Rules nor in the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the AJA) which prescribe the time limit within which to make such an application. He went further to tell the Court that the application for extension of time before Mandia, J.A. should have taken to have combined both the proceedings of the High Court as well as those of this Court. The application before Mandia, J.A. therefore was proper and was not time barred, he concluded.

On the other hand, Mr. Luguwa told the Court that it is true Rule 10 does not set time limit as to the time within which an application for extension of time could be made. But one cannot file an application for an extension of time as and when he wishes. He went on to say, though no time limit has been set, the same must be filed within 60 days. He made reference to the decision of this Court in **Halais Pro-Chemie vs Wella A.G.** (1996) TLR 269 where the Court took inspiration from the Law of

Limitation Act and adopted the time scale of sixty days for an application for revision of which no time limit was set. The Court should set a time limit of 60 days. Once that is acceptable, then the application before Mandia, J.A. was time barred. The same was incompetent, it is liable to be nullified, he charged.

We wish first to associate ourselves with the observation made by both learned counsel that Rule 10 of the Rules empowers the Court to extend time for doing any act authorized under the Rules provided good cause is shown. And that generally there is no time limit to make an application for extension of time for doing any act provided good cause is shown.

But in this case the applicant filed the application for extension of time to file notice of appeal out of time after a period of 2 years and 6 months had elapsed. It is true that there is no specific time scale set in the Rules, the time within which to file such an application akin to an application for leave as provided under Rule 45 (b) of the Rules which should be made within 14 days after refusal by the High Court. We do not, however, think that a party who had been refused extension of time to file notice of appeal by the High Court can come to the Court on "second bite"

as and when he wishes on the pretext that the Rules do not set time scale for such application. Always any step in which a party to any proceedings intends to take, must be taken within a prescribed time so that litigation should come to an end-hence the Latin maxim – *Intereste rei publicae ut sit finis litium*.

In **Halais Pro-Chemie** case cited supra the application for revision, which was filed 10 months after the delivery of judgment, was declared incompetent, inter alia, as it was filed beyond sixty days. Though there was no time – scale spelt out in the Court of Appeal Rules, 1979, the Court took inspiration from the Law of Limitation Act, 1971.

In **James Masanja Kasuka vs George Humba**, TBR Civil Application No. 2 of 1997 (CAT - unreported) the Court having found no time – scale was set for revision, it imposed a time limit of sixty days within which to make such application from the date of the decision. The Court did not end there, it went on and said:-

*"We accordingly set the time limit of sixty days in **civil applications as we have for criminal applications** for review."*[Emphasis ours].

In **Suleman Ally Nyamalegi & 2 Others vs Mwanza Engineering Works Ltd**, Mwz Civil Application No. 9 of 2002 (CAT – unreported) the Court said:-

*"I may also point out that the point canvassed in the above ground was considered and put to rest by this Court in **TBR Civil Application No. 2/1997** between **James Masanja Kasuka and George Humba** wherein a period of sixty days was set. Admittedly, in Kasuka's case this Court was dealing with an application for review. However, the principle enunciated therein will apply to all applications, more so because of the following statement made in that decision:-*

"...We accordingly set the time limit of sixty days in civil applications as we have for criminal applications for review."

So, it is clear therefore that when there is no specific time- scale imposed in any application, the sixty days should come in aid to fill the lacuna. The application before Mandia, J.A. ought to have been lodged

within sixty days from the decision of the High Court. Because the applicant was late to do so for whatever reasons, she ought to have first applied for extension of time. It is proper that she should tell the Court why she delayed in making the application. We agree with Mr. Luguwa. It is quite strange and unprocedural to combine the two limbs i.e. the application arising from the decision of the High Court and the failure to file the application in time in this Court and treat as one application as suggested by Mr. Mponda.

In sum, we hold that the application before Mandia, J.A. was filed outside time. We declare the entire proceedings a nullity. We make no order as to costs.

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

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

R. E. MZIRAY
JUSTICE OF APPEAL

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


B. R. NYAKI
DEPUTY REGISTRAR
COURT OF APPEAL

