

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

CIVIL APPLICATION NO. 138 OF 2016

WAMBELE MTUMWA SHAHAMEAPPLICANT

VERSUS

MOHAMED HAMISRESPONDENT

**(Application for extension of time to apply for a reference
to the Court of Appeal against the decision of Juma JA
dated 16th day of November, 2015 in
Civil Application No. 197 of 2014)**

RULING

27th June & 12th October, 2016

ORIYO, J.A.:

The parties and the subject matter in litigation have had a chequered history in this Court. To mention just a few examples of some of the actions so far brought to the Court include:-

1. Civil Application No. 101/2006 for extension of time to serve respondent with Record of Appeal.
2. Civil Application No. 111/2009 for extension of time to appeal.
3. Arusha Civil Application No. 11/2013 for extension of time to serve respondents with Notice of Appeal and other documents.

4. Civil Application No. 197 of 2014 for extension of time to restore dismissed application.
5. Tabora Civil Application No. 39/2015 for extension of time to serve respondent with Record of Appeal.
6. Civil Application No. 281/2015 Application for extension of time to apply for reference; etc.

What is currently before me is Civil Application No. 138 of 2016. It is brought by way of a Notice of Motion under Rule 10 of the Tanzania Court of Appeal Rules, 2009; (the Rules). The applicant is seeking an order of the Court for an extension of time to enable him lodge a reference against a decision of a single justice of the Court, (Juma, J.A.); dated 16th November, 2015, in Civil Application No. 197 of 2014.

The substantive grounds upon which the application for extension of time to file the reference is predicated upon are as follows:-

- "1. *Denial by the single Justice of the Court of Appeal of the applicant's application for extension of time to apply for a reference of the decision of this Court which was based on too strict a standard as*

opposed to the show of good cause or sufficient cause for delay required by the law.

2. *The Court in dealing with issue of delays did not use in favour of the applicant relating to his advocate's inability to effectively prosecute the application a situation that called for an adjournment to instruct another advocate, the applicant being a layman.*

3. *The applicant's application for review (sic) was filed out of time for reasons well explained but struck out without due consideration to the fact that the applicant as a layman was not able to afford in time to pay the Court's and advocate's fees immediately after the conclusion of the appeal which appeal raised many legal points of law that arose in the judgment of the Court in Civil Appeal No. 44 of 2002, worth determining vide the **review**.*

4. *Further grounds the applicant shall advance during the hearing."*

In further support to the Notice of Motion is a fifteen (15) paragraphs Affidavit of the applicant, Wambele Mtumwa Shahame, affirmed in Dar es Salaam on the 4th day of May 2016. I take the liberty to reproduce the affidavit as hereunder:-

- "1. *That I am the deponent/ the applicant herein and I am conversant with the facts of this application and facts of the case in general.*
2. *That the applicant in this motion was originally the defendant in RM's Civil Case No. 227 of 1995 at the RM's Court of Dar es Salaam at Kisutu. Upon having lost the case the applicant filed an appeal to the High Court of Tanzania, Dar es Salaam Registry being Civil Appeal No. 100 of 1996 which appeal he equally lost hence Civil Appeal No. 44 of 2002 which appeal he equally lost.*

3. *That the case that started simply at the RM's Court above mentioned developed into a dispute that went through a number of litigations in the courts of law and finally determined by the decision of the judges of the Court of Appeal of Tanzania in Civil Appeal No. 44 of 2002. Annexed hereto marked "A" is the copy of the judgment of the court forming part hereof.*
4. *That because the applicant was not satisfied by the decision of the Court; he intended to apply to the Court to have the decision reviewed vide Civil Application No. 124 of 2009 which application was dismissed because it was brought out of time that the court considered to have been too long a delay. Annexed marked "B" is the copy of the ruling of the court and the drawn order forming part hereof.*
5. *That an application by the applicant in an effort to revive the dismissed application for extension*

*of time to apply for a **review** (sic) was equally subject to a setback by Juma J.A in Civil Application No. 16 of 2013 and the application suffered a setback because it was dismissed for reasons of none- prosecution of the same. Annexed marked "C" is the copy of the ruling forming part hereof.*

- 6. That the applicant in further attempts and effort to gain a forum for the intended application for review (sic) filed Civil Application No 221 of 2013 which application was withdrawn for reasons that the applicant's application was defective and was withdrawn with a view of refilling a proper application' Annexed marked "D" is the copy of the order for withdrawal forming apart hereof.*
- 7. That the applicant in an effort to restore the application that was withdrawn filed Civil Application No. 197 of 2014 which application was dismissed by Juma JA for reasons that the*

application was filed out of time and after 30 days allowed by law had expired and that it was not made within the 30 days allowed by the law to restore the application.

- 8. That further reason for the dismissal of the application was that the applicants did not account for each day of the delay. Annexed marked "E" is the copy of the ruling/order of the court forming part hereof.*
- 9. That applicant is in disagreement with the decision of the Justice of the Court of Appeal of Tanzania in annexure "E" above and intends to apply for a reference because the decisions of the Court in Civil Appeal No. 44 of 2002 raised number legal issues that can be resolved by the Court vide the intended review (sic).*
- 10. That the applicant delayed to file the reference in time because the applicant was not represented by any advocate and was not aware of the issue*

of a reference until the applicant was informed by GS Ukwong'a advocate upon consultation that the option open is to file a reference but the time has expired.

- 11. That by the time the applicant became aware of the reference application time had long past hence the applicant's instruction to the said advocate to represent him hence this application and one that was withdrawn annexure "F" hereto.*
- 12. That the applicant has all along been suffering delays due to the changes in advocates due to the fact that he has no money to employ advocates considering the fact his source of income was to come from the subject matter in dispute which property is in the sole management of the respondent as the legal administrator and the applicant has been in the corridors of the courts litigating since the year 1995.*

13. *That because the applicant's rights have not been granted to-date; the applicant has been bogged down in achieving his rights due to legal technicalities that has resulted into applicant's prolonged sufferings.*
14. *The applicant is being denied the rights to be heard due to the said technicalities in procedures above mentioned and this court is a court of justice.*
15. *That this court under the cited provisions of the law has power to grant the orders sought upon such application or on its own.*

VERIFICATION

That all we have stated in paragraphs 1 to 15 above is true to the best of my knowledge save the contents of paragraph 10 that are true based on information received from the said advocate.

DATED at Dar es Salaam this 4th day of May, 2016.

SIGNED

WAMBELE MTUMWA SHAHAME.

AFFIRMED by the said

WAMBELE MTUMWA SHAHAME who is identified
to me by G.S. Ukwonga Advocate who is known
to me personally this 4th day of May, 2016
at Dar es Salaam.....”

Signed
Deponent

In terms of rule 62(1) (b) of the Court Rules, any person dissatisfied with a decision of a single justice of the Court in any civil matter, may **informally apply** for a **reference** to the learned Judge at the time the decision is given or by writing to the Registrar within seven (7) days thereof to have the decision varied, discharged or reversed by the Court. It is apparent from the record that the applicant has, on different occasions applied for enlargement of time, but in most cases the applications were struck out for failure of the applicant to show acceptable, good cause for the delays.

This time, the applicant is back in Court with an application for extension of time to lodge an application for a **reference** against the ruling of Juma, J. A. dated 16/11/2015 in Civil Application No. 197 of 2014.

The application is for orders as follows:-

- "1. Court be pleased to enlarge time for the applicant to lodge an application for a **reference** against the ruling of Juma, J.A. dated 16th November, 2015 in Civil Application No. 197 of 2014.*
- 2. And for an order that costs of and incidental to this application abide the result of the said appeal."*

With regard to the grounds upon which the application is predicated upon, the applicant has put up the following three grounds:-

- "1. Denial by the single Justice of the Court of Appeal of the applicant's application for extension of time to apply for extension of time to file application for **reference** of the decision of this Court was based on too strict a standard as opposed to the show of good cause or sufficient cause for delay required by the law.*
- 2. The Court in dealing with the issue of delays did not use in favour of the applicant the reasons advanced by the applicant, relating to his*

advocate's inability to effectively prosecute the application a situation that called for an adjournment to instruct another advocate as the applicant being a layman.

*3. The applicant's application for **reference was** filed out of time for reasons well explained but struck out without due consideration to the fact that the applicant as a layman was not able to afford in time to pay in time the Court's and advocates fees immediately after the conclusion of the appeal which appeal raised many legal points of law that arose in the judgment of the Court in Civil Appeal No. 44 of 2002 worth determining vide the review (sic).."*

When the application was called on for hearing, Mr. Godfrey Ukwonga, learned counsel, appeared for the applicant and Mr. Ibrahim Bendera, learned counsel represented the respondent.

At the outset, both counsel expressed their views that this was equivalent to a second application for extension of time to apply for a reference under Rule 62(1) of the Court Rules, 2009. With leave of the Court they adopted the accompanying affidavits, the written submissions, together with the lists of authorities filed in Court in support thereof.

The main issue begging for determination here is whether the applicant has, through his notice of motion, affidavit and submissions been able to account for the delay. **Rule 10** of the Court Rules provides as follows:-

*"10. 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 the expiration of that time and whether before or after the 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."* (Emphasis provided).

The main issue for my consideration here is whether the applicant has accounted for every single day of delay from the date of the decision

of the single justice on 16/11/2015; to the date this application was lodged in Court on 5/5/2016. By a simple calculation, there was a lapse of over five (5) months period from the date of the decision of the single justice to the date the application for an enlargement of time was filed in Court.

What can be gathered from his affidavit, the applicant's delay was due to his ignorance of the law as he did not know anything about an application for a reference until the time when he secured the services of an advocate. Further, he delayed to engage an advocate due to financial constraints as he did not have money to pay court fees and counsel fees.

However, Mr. Bendera, learned counsel who appeared for the respondent, vehemently **argued** against the reasons put up by the applicant as constituting "**good cause**" for the delay. He relied on the Court's decision in **Royal Insurance (T) Ltd Vs Kiwengwa Strand Hotel Ltd** Civil Application No. 111 of 2009 (unreported); in support thereof.

The power of the Court to grant extension of time under Rule 10 of the Court Rules, is discretionary. The matters that the Court would take into account in exercising its discretion, include:-

- (1). length of delay;
- (2). reasons of the delay;
- (3). the degree of prejudice to the other party, if granted;
- (4). the chances of success, if the application is granted.

See also Court's decision in **Unilever Tanzania Limited Vs Said Sudi and 26 others**; Civil Application No. 88 of 2013 (unreported).

The Court, in dealing with delays had the following to say in **Bushfire Hassan Vs Latina Lucia Masaya**, Civil application No. 3 of 2007 (old Rules) (unreported):-

"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

Some seven(7) years later, under the new Rules, dealing with a similar subject matter under **Rule 10** above, in the case of **Mustafa Mohamed Raze Vs Mehboob Hassanali Versi**, Civil Application No. 1168 of 2014, (unreported), the Court stated as follows:-

"From the wording of this Rule, it is my view that an application for extension of time may be brought at any

*time even after the expiration of the prescribed time.
It is also my understanding that the **applicant's
obligation is to account for the delay for
everyday within the prescribed period.**" (emphasis
provided).*

Considering the applicant's reasons for the delay and the failure to account for each day of delay; on my part, I find no good cause to enlarge time for the applicant to file a reference against the decision of the Court.

I make no order for costs.

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

K. K. ORIYO
JUSTICE OF APPEAL



I certify that this is a true copy of the original


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL