

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

CIVIL APPLICATION NO. 226/01 OF 2017

TANZANIA RENT A CAR LIMITEDAPPLICANT

VERSUS

PETER KIMUHURESPONDENT

**(Application for Extension of time to file review of an order
of the Court of Appeal of Tanzania at Dar es Salaam)**

(N.P. Kimaro, B.M. Mmilla, And S.A. Lila, JJ.A.)

dated 18th day of October , 2016

in

Civil Appeal No. 84 of 2012

RULING OF THE COURT

10th August & 19th September, 2017

LILA, J.A.:

This ruling is in respect of a preliminary point of law raised by the respondent that:-

"The application for extension of time is time barred"

The above objection was raised by the respondent after the applicant had filed an application for extension of time to file review of an order of the Court delivered on 18th October, 2016 (N.P. Kimaro, B.M. Mmilla and S.A. Lila JJ.A.). The application was made

by way of a notice of motion which was filed on 26th May, 2017. It was preferred under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and the affidavit in its support was taken by Mr. Brayson Shayo, learned advocate for the applicant. For the Respondent, Mr. Othiambo Kobas, learned advocate, did swear an affidavit in reply to oppose the application.

Briefly, the background to the matter basing on the sketchy facts available in the record is this. The record shows, surely wrongly, that the applicant company was the 2nd respondent instead of 2nd defendant in Civil Case No. 126 of 2003 in the High Court at Dar es Salaam. The respondent was the plaintiff. Wrongly again, ULC Tanzania Limited was indicated as the 1st respondent instead of the 1st defendant in that suit. ULC Tanzania Limited was discharged by the High Court after closure of the plaintiff's case for no case to answer. The High Court (Massengi, J) adjudged the matter in favour of the respondent on 11th May, 2011. Aggrieved, the applicant preferred an appeal to the Court. That was Civil Appeal No. 84 of 2012. At the hearing of the appeal, three points of preliminary objection were raised by the respondent. Mr. Mbwambo, learned

advocate, who appeared for the appellant readily conceded to the first point of preliminary objection that the appeal was time barred. Consequently, the Court dismissed the appeal with costs. That order aggrieved the applicant and wished to have such order reviewed by the Court but was late to lodge an application for review. On that account, the applicant filed this application for extension of time. The respondent has opposed it alleging that it was filed out of time.

Before me the applicant was represented by Mr. Brayson Shayo, learned advocate, and the respondent had the services of Mr. Othiambo Kobas, learned advocate.

In his submissions Mr. Kobas pointed out that the application before the Court is for extension of time within which to file an application for review of the Court's order made on 18/10/2016. He contended that Rule 66(3) of the Rules requires that an application for review should be made within sixty (60) days from the date of the order sought to be reviewed. He further submitted that although the Rules are silent on the time within which an application for extension of time should be made, the Court, in the case of **Bank of Tanzania vs. Said A. Marinda and 30 others**, Civil Reference No.

3 of 2014 (CAT unreported) at page 7 of the typed ruling, stated that when there is no specific time scale in filing any application, the sixty days should come in aid to fill the lacuna. Elaborating on that, Mr. Kobas said the cited case which was before Mandia JA, was an application for extension of time to apply for leave to appeal and the Court said it ought to have been filed within sixty days. Basing on that authority, he said, the applicant ought to have had filed this application within a period of sixty days after the period of filing an application for review had expired. Regarding the present application Mr. Kobas contended that it was filed on 26/5/2017 while the decision for which extension of time is sought was delivered on 18/10/2016. He, thus, pressed that the present application was filed long after the lapse of sixty days required to file an application for extension of time. He accordingly concluded that the application is time barred and urged the Court to dismiss it with costs.

On his part, Mr. Shayo strongly desisted from going along with the understanding of Mr. Kobas on what the Court stated in the case of **Bank of Tanzania vs. Said A. Marinda and 30 Others** (supra). He said, the Court, in that case did not set a principle that an

application for extension of time should be made within sixty days after expiry of the time set for filing an application for review. He was of the view that Mr. Kobas had misinterpreted the principle enunciated in that case. He said, in that case, the issue was whether an application for extension of time in this Court as a second bite can be filed at any time after being refused by the High Court. He said the Court answered that question at page 5 of the Ruling that the party who has been refused extension of time to file notice of appeal by the High Court cannot come to the Court on second bite as and when she wishes. He stressed that in the Ruling the Court stated that an application for extension of time as a second bite can only be made within sixty days after the same is denied by the High Court. Since this is not an application for the second time (second bite), Mr. Shayo contended that such principle does not apply. In the alternative, Mr. Shayo said, if the Court in the cited case set sixty days as the time within which an application for extension of time should be made, then the Court should, under Rule 106 (3) of the Rules, consider the possibility of departing from that decision for the reasons that:-

1. Rule 10 of the Rules does not provide for time limit and to do otherwise is to go against the spirit of that Rule.
2. That the decision will conflict with many decisions on the issue for example in **Rutagatina C.L vs. The Advocates Committee and Another**, Civil Application No. 98 of 2010 (CA unreported) where the court stated that the application for extension of time has not time limit.
3. There will be a multiplicity of applications for extension of time.
4. It will cause injustice to those who come to the Court late because of long sickness.

Mr. Shayo, for the above reasons, urged the Court to overrule the objection or else depart from the Court's decision in the case of **Bank of Tanzania vs. Said A. Marinda and 30 Others (supra)**.

Mr. Kobas rejoined by reiterating his earlier position and added that Rule 106 (3) of the Rules is inapplicable in the present situation as it concerns filing of written submissions. He said all that the Court can do if it does not agree with the decision in the **Bank of Tanzania vs. Said A. Marinda (Supra)**, is to distinguish and not to

depart. He thus discredited the reasons given for departure on account that they have the effect of defeating the purpose of having the law of limitation which is to bring litigation to an end. He maintained that the application is time barred hence liable to be struck out with costs.

I have given a deserving weight to the submissions of counsel for both sides.

A close look at the line of argument taken by the counsel for the parties vividly shows that they share a common feature. They agree that Rule 10 of the Rules does not set time limit within which an application for extension of time should be made. That was also stated by the Court in the case of **Bank of Tanzania vs. Saidi A. Marinda** (supra). Rule 10 of the Rules provides:-

*"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 added).

Given the above position of the law, it is clear that Rule 10 of the Rules vests the Court with discretionary powers to extend time limited by the Rules for doing any act authorized or required by the Rules.

To be fair to the submissions by counsel for both sides and to be able to exhaustively resolve the controversy in this case, I am inclined to state that am being invited to determine whether the Court in its decision in **Bank of Tanzania vs. Said A. Marinda and 30 Others** (supra) set sixty days as the time limit within which an application for extension of time should be made and its applicability in the present application.

In order to be able to properly address the above issue there is need to revisit albeit briefly the background of what transpired in the case of **Bank of Tanzania vs. Said A. Marinda and 30 Others**

(supra) as contained in the very ruling of the Court. At the introductory part of the ruling it is stated that:-

" 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".

It is accordingly evident that Bank of Tanzania, the applicant in Civil Application No. 150 of 2011 before the Court (Mandia, JA), was applying for extension of time to file a notice of appeal for the second time (second bite) after being denied by the High Court (Mruke, J). That application (second bite) was filed after a period of 2 years and 6 months after it was refused by the High Court. That prompted the Court to ask itself whether or not that was proper. Counsel for both

sides were asked to address the Court on that issue. Thereafter, the Court, after considering the submissions by the counsel for both sides and previous decisions of the Court of **Halais Pro-Chemie vs. Wella A. G.** (1996) TLR 269, **James Masanja Kasuka vs. George Humba** TBR Civil Application No. 2 of 1997 (CAT unreported) and **Suleiman Ally Nyamalegi and 2 Others vs. Mwanza Engineering Works Ltd**, MWZ Civil Application No. 9 of 2002 (CAT – unreported), at page 7 to 9 of the typed ruling, stated:-

"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”.(Emphasis added).

In the light of the above finding of the Court, my understanding is that the Court pronounced a legal principle that an application for extension of time, like any other application for which no specific time for instituting the same is provided by the Rules or any other law, should be filed or lodged within sixty days from the date of the decision. Though the Court, in the above case, was considering an application for extension of time after it was refused by the High Court in what is now referred to as a second bite, yet the finding arrived at by Court covers all applications for which the lodgment time is not specified. The sixty days principle, therefore, applies irrespective of whether it is the first time the application is being made or that it is being made as a second bite. A similar observation in respect of the Court’s decision in **Bank of Tanzania vs. Said A. Malinda and 30 Others** (supra) was given by the Court in the case

of **Dimension Data Solution Limited vs. Wia Group Limited and Two Others**, Civil Application No. 218 of 2016(unreported) where the Court said:-

" I agree with Mr. Ndazi that in that case, the Court fixed the time limit for an application for extension of time to file a notice of appeal after refusal by the High Court, of the first application. The Court went ahead however, to hold that the limitation period of 60 days applies to all applications."

I, for the above reason, accordingly agree with Mr. Kobas that the principle stipulated by the Court in the case of **Bank of Tanzania vs. Said A. Marinda and 30 Others** (supra) was meant to apply to all applications. In fact that principle was earlier on stated by the Court in the case of **Suleiman Ally Nyamalegi and 2 Others vs. Mwanza Engineering Works Ltd**, Civil Application No. 9 of 2002(MZA) (unreported), where 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 statement made in that decision:-

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

I now turn to determine the present application. The critical question to be considered is whether the sixty days rule conveniently applies in all circumstances and applications.

The legal position set in the case of **Bank of Tanzania vs. Said A. Marinda**, in very clear terms, implies that an application for extension of time must be filed within sixty days from the date of the decision and a person who is late in doing so is obliged to file two applications for extension of time. The first one will be in respect of the days exceeding the sixty days in which he or she will have to account why he or she is late in filing the application for extension of

time within sixty days. In this case he will have to account for the days exceeding sixty days only. If granted, the applicant will then proceed to file another application for extension of time in which he or she will have to account for the delay in filing the application for extension of time within the first sixty days from the date of the decision, order, or judgment. This, in my view, justifies Mr. Shayo's concern that it will cause a multiplicity of applications.

The long established practice, and the Court have clearly pronounced itself, is that in considering an application for extension of time under Rule 10 of the Rules, the courts may take into consideration such factors as, the length of delay, the reason for the delay, and the degree of prejudice that the respondent may suffer if the application is granted. (**See Tanzania Revenue Authority vs. Tango Transport Co. Ltd, Tango Transport Co. Ltd vs. Tanzania Revenue Authority**, Consolidated Civil Applications No.4 of 2009 and 9 of 2008, **Unilever Tanzania Limited vs. Said Sudi and 26 Others**, Civil Application No. 88 of 2013 and **Rutagatina C.L vs. The Advocates Committee and Another** (supra) (all unreported).

In yet another case of **Bushfire Hassan vs. Latina Lucia Masaya**, Civil Application No. 3 of 2007 (unreported) the Court, dealing with delays and applying the Tanzania Court of Appeal Rules, 1979 (the Old Rules), stated:-

" 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".

In **Mustafa Mohamed Raze vs. Mehboob Hassanali Versi**, Civil Application No. 1168 of 2014 (unreported), while considering an application for extension of time under Rule 10 of the Rules, 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 supplied).

Given the above long standing and firmly established legal principles applicable in considering applications for extension of time, it is my strong view that a person applying for extension of time is required to file only one application for extension of time and in it he or she will have to account for each day of delay for the whole period of time he or she has been late.

I am alive to the sound public policy *intereste rei publicae ut finis litium* which means litigation must come to an end (**See Chandrakant Joshubai Patel vs. Republic** (2004) TLR 218) and that one cannot be allowed to file an application for which no time limit is specified by the Rules or any other law, as and when he wishes, but I am of the view that in applications for extension of time there is sufficient control firmly placed by the Court. The requirement that he should show good cause of delay and has to account for every single day of delay from the date of the decision to the date when the application was lodged sufficiently restricts unmerited applications from being filed. I therefore associate myself with the comment by T. R. Desai in his book **Commentary on the Law of Limitation Act**, 9th Edn, Universal Law Publishing Co. At pages 121-

122 quoted in the case of **Dimension Data Solutions Limited vs Wia Group Limited and 2 Others**(supra) that:-

*" It is axiomatic that condonation of (a) delay is a matter of discretion of the Court. Section 5 of the limitation Act does not say that **such discretion can be exercised only if the delay is within a certain limit. Length of the delay is no matter, acceptability of the explanation is the only criterion.** Sometimes delay of the shortest range may [not] be condonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory."*[Emphasis added].

Having been inspired by the above comment the Court went on to state that the limitation period of 60 days could not have been meant to apply to applications for extension of time.

In the circumstances, I am increasingly of the firm view that there is no specific time limit set within which an application for

extension of time should be filed. This is not only in accordance with the long established practice built on Court's landmark decisions but also accords to logic that so as to expedite dispensation of justice there is need to avoid, whenever possible as is the case herein, multiplicity of applications. This is indeed the spirit of the law as it categorically states that ***the Court may, upon good cause shown, extend the time ... whether before or after the expiration of that time and whether before or after the doing of the act.*** Therefore, the wording of Rule 10 of the Rules, carefully considered, in my view, suggests that even where an applicant is late for so many days beyond the prescribed period of doing an act, he has to file one application for extension of time in which he is to give satisfactory reasons for the delay including, but not limited to, giving an account for each day of delay for the whole period he has been late.

For reasons I have demonstrated above, I am of the view that the sixty days rule should apply in filing of all other applications for which no time limit is prescribed except in applications for extension of time. For this reason, I agree with Mr. Shayo. I accordingly hold

that this application is not covered by the sixty days rule and is therefore not time barred.

All said, the point of preliminary objection raised is hereby overruled. I order each party to bear its own costs.

DATED at **DAR ES SALAAM** this 14th day of September, 2017

S.A. LILA
JUSTICE OF APPEAL

I certify that this is a true copy of the original



E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL