

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

CIVIL APPLICATION NO. 474/01 OF 2016

NOHAMED SALUM NAHDI APPLICANT

VERSUS

ELIZABETH JEREMIAH RESPONDENT

**(Application for Extension of time within which to lodge Notice of Appeal
from the Decision of the High Court of Tanzania**

at Dar es Salaam)

(Kibela, J.)

dated 28th day of October, 2014

in

Civil Case No. 45 of 2007

RULING

10th May, & 8th June, 2017

MMILLA, J. A.:

The applicant in this matter, Mohamed Salum Nahdi, is seeking the indulgence of the Court to extend time within which to file a notice of appeal. It brought by way of a notice of motion and is made under Rules 10, 47 and 48 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit affirmed by him.

On the date of hearing, Mr. Daniel Haule Ngudungi, learned advocate, appeared for the applicant, while the respondent, Elizabeth

Jeremiah, appeared in person and undefended. She filed an affidavit in reply in which she contended generally that the application is baseless and urged the Court to dismiss it.

In his submission in support of the application, Mr. Ngudungi stated that their main reason for the delay is contained in paragraph 6 of the applicant's affidavit. It is to the effect that after the *ex parte* decision of the High Court, they unsuccessfully filed an application before the same court for setting aside such *ex-parte* decision, and that after its dismissal, he unsuccessfully applied in that court for extension of time within which to appeal out of time before the Court, hence the present application which is a second-bite. He has urged the Court to grant the application.

On her part, the respondent submitted that the applicant has no genuine reasons other than delaying her from enjoying her rights in respect of the decree accorded to her by the trial court. She added that even the High Court noticed that, which is why it dismissed their application.

In a brief rejoinder, Mr. Ngudungi had nothing substantial to add, but repeated his prayer for the Court to allow the application.

I have carefully considered the competing submissions of the parties. The starting point is Rule 10 of the Rules. Under this Rule, the Court has a wide discretion to extend the time limited by these Rules where the party moving it may have shown good cause to account for failure to do what ought to have been done within the prescribed time. Rule 10 of the Rules provide that:-

*"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 the 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].

In considering whether or not to extend the time during which some step in procedure requires to be taken, there must be material on which the court can exercise its discretion. See the case of **Tanzania Revenue Authority v. Tango Transport Co. Ltd**, Consolidated Application No. 4 of 2009, CAT (unreported), in which the court observed that in determining whether or not to grant a prayer for extension of time, the Court should

nevertheless take into account the relevant factors, including but not limited to, the length of delay; the reason for the delay; whether there is an arguable case; for example, whether there is a point of law or the illegality or otherwise of the decision complained of; and whether the granting of the order may cause undue prejudice to the opposite party.

As afore-pointed out, after the *ex-parte* judgment was delivered on 28.10.2014, the applicant unsuccessfully applied for an order to set aside the said judgment. That application was dismissed on 19.6.2015. Subsequent to that, the applicant unsuccessfully lodged his first application for extension of time before the High Court on 6.7.2015. I have no doubt that because it was necessary for the applicant to take the step of setting aside the said *ex parte* judgment before exercising the right to appeal, it is certain that the reasons given in paragraph 6 of the affidavit in support of the application has accounted for period from 28.10.2014 when the said *ex parte* judgment was delivered up to 30.10.2016 when the application for extension of time was dismissed by the High Court. Unfortunately, the learned advocate for the applicant has assigned no reasons whatsoever why they waited for 18 days without taking the appropriate steps.

As has often stated, even where the delay is not inordinate, the reasons for the delay must be candidly explained. That was even more important given the respondent's outcry that the applicant is playing games to delay her rights of enjoying her decree.

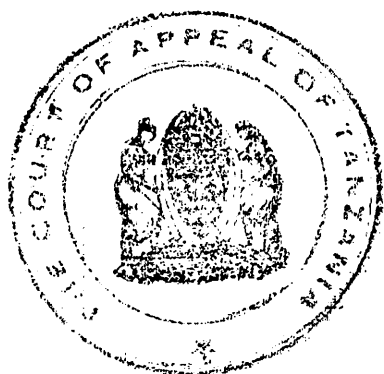
Since the applicant in the present application failed to account the delay in respect of the 18 days from the day his application to set aside the ex-parte judgment to the day he lodged his first application for extension of time in the High Court, I cannot avoid the conclusion that he has failed to give reasonable cause for the delay. For that reason, I dismiss the application with costs.

Order accordingly.

DATED at DAR ER SALAAM this 5th day of June, 2017.

B. M. MMILLA
JUSTICE OF APPEAL

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




A.H. Msumi
DEPUTY REGISTRAR
COURT OF APPEAL