

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CIVIL APPLICATION NO. 2 OF 2015

1. GUARDIAN LIMITED
2. PRINTA AFRIQUE LIMITED }**APPLICANTS**

VERSUS

JUSTIN NYARI.....RESPONDENT

(Application from the Judgment and Decree of the High Court of Tanzania
At Arusha)

(Sambo, J.)

Dated the 23rd day of February, 2009
in
Civil Case No. 35 of 2001

.....

RULING

23rd & 28th February, 2017

MUGASHA, J.A.:

The applicants, **GUARDIAN LIMITED** and **PRINTA AFRIQUE LIMITED** have brought this application seeking extension of time to file an appeal against judgment and decree in civil case No 35 of 2001. The application is by Notice of Motion brought under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The application is sought on basically one main ground namely: The applicants could not file the appeal within forty five (45) days as per Court's order issued on 22/12/2014 because they were

not supplied with the proceedings, judgment and decree by the District Registrar who after expiry of the extended period informed the applicants' counsel that the case file could not be traced.

The Notice of Motion is accompanied by the affidavit of **COLMAN MARK NGALO**, applicants' counsel. The respondent filed an affidavit in reply which basically does not dispute the applicants' counsel averments.

At the hearing of the application, the applicants were represented by Mr. Colman Ngalo, learned Counsel and the respondent had the services of Mr. Loomu Ojare, learned Counsel. Parties adopted the respective affidavits as integral part of their submission in this application.

It is the deposition of Mr. Ngalo in paragraphs 3, 4, and 5 that: following the Court's order which extended time to file an appeal against Civil Case No. 35 of 2001, on 8/1/2015 he filed notice of appeal and wrote a letter to the District Registrar requesting to be supplied with copies of the impugned judgment, decree and proceedings. In paragraphs 6, 7, 8 and 9 of his affidavit, Mr. Ngalo avers to have made follow ups on 30/1/2015, 2/1/2015 and requested personal assistance of the Registrar on the predicament. However, while the extended period expired on 4/2/2015, the Registrar wrote a letter on 5/2/2015 narrating that the case file could not

be traced. He prayed for the grant of the application arguing that the applicants are not to blame for the delay.

On the other hand, Mr. Loomu Ojare for the respondents did not oppose the application as reiterated in the affidavit in reply but he prayed that costs be in the main cause which was supported by Mr. Ngalo in his brief rejoinder.

The applicants are in the present application seeking extension of time to appeal against judgment and decree in civil case No. 35 of 2001. As earlier stated, the respondent is not opposing the application. However, according to rule 10 of the Rules, for the applicant to succeed in any application for enlargement of time, he is bound to avail sufficient cause on what caused him to delay to do what he ought to have done within prescribed time. (See **HENRY MUYAGA Vs. TTCL** Application No. 8 of 2011 (unreported)). What constitutes sufficient cause includes: whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant. (See **TANGA CEMENT COMPANY LIMITED v JUMANNE D. MASSANGA AND AMOS A. MWALWANDA CIVIL APPLICATION NO. 6 OF 2001** (unreported). The more

persuasive reason is that, the applicant can show that the delay has not been caused or contributed by dilatory conduct on his part. (See **SHANTI V HINDOCHE & OTHERS [1973] E.A. 207**)

Mr. Ngalo's main argument is that, the applicants could not file the appeal within the extended forty five (45) days pursuant to the Court order because they were not yet supplied with the requisite documents by the District Registrar. Despite making the follow ups, it was after the expiry of the extended period when the Registrar narrated that the case file was still being traced.

According to rule 96 (1) (d), (g), (i) and (h) of the Rules, proceedings, judgment and decree are amongst vital documents which must be in the record of appeal or else the record will be rendered incomplete and appeal incompetent. Without such vital documents, it was beyond the applicants' capability to comply with the Court's order to file the appeal within the extended period which is a valid explanation for delay constituting sufficient cause according to what the Court decided in **TANGA CEMENT COMPANY LIMITED v JUMANNE D. MASSANGA AND AMOS A. MWALWANDA** (supra). Moreover, having considered the sequence of events, apart from diligence exhibited by the applicants' counsel in making the follow up at the High Court, it is apparent that the delay was

occasioned by the District Registrar for delaying to furnish the applicants with requisite documents for the timely processing of an appeal before the Court. In this regard, and according to what was decided in **SHANTI V HINDOCHE & OTHERS** (supra), the delay was neither caused nor contributed by the dilatory conduct of the applicants. Thus, I agree with Mr. Ngalo that the applicants cannot shoulder the blame on the delay.

In view of the aforesaid reasons, I am satisfied that, the applicants have advanced reasons for the delay which I consider as good cause in terms of rule 10 of the Rules. Accordingly, the application for extension of time within which to file the appeal is granted. The same to be filed within fourteen (14) days from the date of this Ruling.

I order costs to be in the cause as prayed.

DATED at **ARUSHA** this 24th day of February, 2017.

S. E. A. MUGASHA
JUSTICE OF APPEAL

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




A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL