

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 266/17 OF 2017

ZAWADI MSEMAKWELIAPPLICANT

VERSUS

NMB PLC.....RESPONDENT

(Application for Extension of time within which to serve the Respondent with
Civil Application No.221/8 of 2017 from the decision of the High Court of
Tanzania at Dar es Salaam)

(Nyerere,J.)

dated 29th day of March ,2017

in

Revision No. 427 of 2016

RULING

7th & 20th day of November, 2017

MZIRAY, J.A.:

Before me is a Notice of Motion which the applicant made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (Rules). She is seeking an order for extension of time to serve the respondent with Civil Application No. 221/18 of 2017 which she had earlier on filed in this Court. The application is supported by the affidavit deposed by Stella Simkoko, the applicant's learned counsel.

The applicant advanced grounds in her Notice of Motion to explain why she failed to serve the respondent with the documents within fourteen days as required under the provisions of Rule 84 (1) of the Rules. The grounds advanced are to the effect that she failed to serve the respondent with the said application as she was the sole advocate in the firm after her fellow advocate, one Ms. Dainess Andrew Simkoko had been off duty attending her sick father, which led her to be pre-occupied with attending to the already scheduled cases in the dairy and other office duties, hence diminished her ability to simultaneously focus on the matters not scheduled in the dairy. The grounds were further expounded in the supporting affidavit which Ms. Simkoko deponed.

At the hearing of this application, Ms. Stella Simkoko, learned advocate appeared for the applicant. The respondent though served, did not appear in Court for which, I had no option but to proceed with the hearing of the case *ex parte* under the provisions of Rule 63(2) of the Rules.

Ms. Simkoko, in arguing the application, adopted the affidavit which supported the application and the written submissions, as an integral part of the applicant's case. According to the learned advocate, the service of the Notice of Appeal on the respondent is important as it will open way for the

applicant to be heard by the Court on the intended appeal. On that reason and others deponed, she invited the Court to consider the application on the strength of what is averred in the supporting affidavit.

From the affidavit in support of the application and the written submissions placed before the Court, I must begin from the legal premise provided under Rule 10 governing the discretion of the Court when determining applications for extension of time on “*good cause*”. The Rule 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.

What the learned counsel for the applicant has been all long doing since becoming aware of the fact that she did not serve the respondent with the referred documents, is one of the issue that shall guide my determination

of the existence or otherwise, of good cause in the present application. This Court faced a similar scenario in the case of **Royal Insurance Tanzania Limited Vs. Kiwengwa Strand Hotel Limited**, Civil Application No. 166 of 2008 (unreported) while considering an application for extension of time under Rule 8 of the Court of Appeal Rules, 1979 (old Rules) now Rule 10 where an applicant therein was required to show "sufficient reason." The Court stated:

"It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, act very expeditiously and that the application has been brought in good faith"

What is scanned from paragraphs 2,3,4 and 5 of the supporting affidavit is that on 22/5/2017 the learned counsel for the applicant filed in Court Civil Application No. 221/18 of 2017 seeking extension of time to serve the respondent with a copy of Notice of Appeal. On 12/6/2017 when preparing herself to argue the application for leave to appeal to the Court Appeal scheduled for hearing on 14/6/2017, she noted that the respondent was not served with the said application. In the lead, the learned counsel on

14/6/2017 filed the present application seeking extension of time to serve the respondent with the said application.

I have carefully considered the arguments advanced in support to the application. It is apparently clear that the learned counsel discovered the omission on 12/6/2017. Without wasting time, she promptly prepared and filed this application on 14/6/2017. With great respect, the learned counsel acted, fast, reasonable and diligently to warrant this Court exercise its power under Rule 10 in her favour. For the foregoing reasons, the application is of merit. The same is accordingly granted. I make no order as to costs.

DATED at DAR ES SALAAM this 13th day of November, 2017.

R. E. S. MZIRAY
JUSTICE OF APPEAL

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


A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL