

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 366/01/2017

BENEDICT SHAYO APPLICANT

VERSUS

CONSOLIDATED HOLDINGS CORPORATION as Official

Receivers of TANZANIA FILM COMPANY LIMITED RESPONDENT

(Application for extension of time within which to apply for leave to amend the record of appeal from the Ruling and Order of the High Court of Tanzania, at Dar es Salaam)

(Mlay, J., Mandia, J., and Mihayo, J.)

dated 31st day of August, 2006

in

Miscellaneous Civil Appeal No. 8 of 1997

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RULING

24th August & 13th September 2018

NDIKA, J.A.:

By Notice of Motion made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), Benedict Shayo, the applicant herein, prays against Consolidated Holdings Corporation as the Official Receivers of Tanzania Film Company Limited, the respondent, for extension of time within which to apply for leave to amend the record of appeal in respect of Civil Appeal No. 103 of 2013.

When the application came up before me for hearing on 24th August, 2018, Mr. Joseph Rutabingwa, learned counsel, appeared for the applicant. The respondent was absent despite having been duly served with the notice of hearing on 9th August, 2018. Upon Mr. Rutabingwa's prayer, I ordered the hearing to proceed in the respondent's absence in terms of Rule 63 (2) of the Rules.

Mr. Rutabingwa fully adopted the Notice of Motion and the accompanying affidavit. Briefly, the said affidavit avers that after the applicant had lodged his appeal before the Court (that is Civil Appeal No. 103 of 2013) on 23rd December, 2013 against Tanzania Film Company Limited, the said company was put under receivership and its operations were taken over by a public entity known as Consolidated Holdings Corporation. It thus became imperative that the said Consolidated Holdings Corporation be made a party to the pending appeal. For the sake of joining the said corporation as a party to the appeal as well as incorporating into the record of appeal certain documents that had not been included, the applicant duly lodged Civil Application No. 30 of 2014. That application, however, was to no avail; it was struck out on 31st July, 2017 on account of being omnibus as well as being laid under wrong provisions of the law.

Thereafter, the applicant re-approached the Court on 17th August, 2017 and filed the present application for extension of time.

Submitting, Mr. Rutabingwa argued that since the initial application was duly lodged in 2014 and that it was struck out due to its incompetence, the delay from the moment the appeal was lodged until when the initial application was struck on 31st July, 2017 constituted an excusable technical delay. He added that, following the termination of the first application, the applicant acted promptly by re-approaching the Court and filing the present application on 17th August, 2017, which was only three days after the Court's Registry had supplied him with a certified copy of the order striking out the first application. The said copy is annexed to the supporting affidavit. Accordingly, the learned counsel urged me to grant the application as he believed that good cause for condonation of the delay had been shown.

I have carefully considered the Notice of Motion, the supporting affidavit and the oral submissions in support of the application. I think it bears reciting at this point that although the Court's power for extending time under Rule 10 of the Rules is both broad and discretionary, it can only be exercised if good cause is shown. Whereas it may not be possible to lay

down an invariable definition of good cause so as to guide the exercise of the Court's discretion under Rule 10, the Court must consider factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged and the overall importance of complying with prescribed timelines: (see, for instance, this Court's unreported decisions in **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987; **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001; **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013; **William Ndingu @ Ngoso v. Republic**, Criminal Appeal No. 3 of 2014; and **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010). See also **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] TLR 387.

It is noteworthy that in the instant application the respondent was duly served with the Notice of Motion but for an unknown cause it elected to file no affidavit in reply. The absence of an affidavit in reply means that

the applicant's averments in the supporting affidavit are uncontroverted. I would add that the respondent's indifference to these proceedings was further exhibited by its default of appearance at the hearing as already hinted.

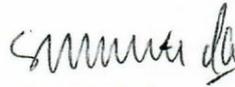
Turning to the merits of this application, the issue is whether a good cause has been shown for condonation of delay. Based upon the uncontested averments in the supporting affidavit that the applicants had duly lodged an application for leave to amend the record of appeal and that the said application came to naught as it was struck out due to incompetence, I would agree with Mr. Rutabingwa that the entire period up to 31st July, 2017 when that application was terminated constitutes an excusable technical delay. I would also go along with the learned counsel's submission that on the whole the applicant promptly and diligently re-approached the Court on 17th August, 2017 to launch the present pursuit for extension of time after his initial application became abortive. It means, therefore, that the entire period of delay has been duly accounted for. In addition, I have taken into account that it does not appear that the respondent is likely to suffer any prejudice if time is extended. Accordingly, I find good cause for extending time as requested.

The above said, I grant the application. Accordingly, I order the applicant to file the intended application within fourteen days of the delivery of this ruling. Costs of this application shall abide by the outcome of the pending appeal.

DATED at **DAR ES SALAAM** this 11th day of September, 2018.

G. A. M. NDIKA
JUSTICE OF APPEAL

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



S.J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL

