

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 496/17 OF 2016

FATUMA RAMADHAN.....APPLICANT

VERSUS

RAJABU OMARY LIMEI..... RESPONDENT

**(Application for Extension of time to serve the respondent with a copy
of Notice of Appeal out of time from the decision of the High Court of
Tanzania at Dar es Salaam)**

(Mgaya, J.)

dated the 30th day of March, 2016

in

Land Case No. 48A of 2013

RULING

6th & 18th day of February, 2018

MZIRAY, J.A.:

This application by Notice of Motion was brought under Rule 10 of the Tanzania Court of appeal Rules, 2009, (the Rules). Essentially, the applicant is seeking extension of time within which to serve the respondent with a copy of notice of appeal and a letter to the Registrar applying for copies of the judgment, decree and proceedings from the judgment and decree of the High Court sitting at Dar es Salaam dated the 30th day of March, 2016 in Land Case No. 48A of 2013.

The application is premised on the ground that the applicant failed to serve the respondent with the said documents out of sheer negligence of law after being abandoned by her advocate. The application is supported by an affidavit of Fatuma Ramadhani, the applicant.

When the matter was called on for hearing, Mr. Abubakari Salum, learned counsel, appeared for the applicant. The respondent who was duly served did not appear and no reasons were advanced for the default. The learned counsel for the applicant in the circumstance prayed for leave to proceed in the absence of the respondent in terms of Rule 63 (2) of the Rules. The prayer was duly granted.

Mr. Salum, learned counsel, in his brief submission urged the Court to grant the application on the strength of what is averred in the supporting affidavit. He stressed out that prior to have been instructed, the applicant had the services of Mashiku and Co. Advocates who filed notice of appeal and a letter to the Registrar applying for copies of the judgment, decree and proceedings within the prescribed time. Soon thereafter, Mashiku and Co. Advocates terminated her legal services to the applicant without so much as serving the same on the respondent and she was not even informed what were the next steps to take having in mind the fact

that the applicant was a lay person. The respondent did not file any affidavit in reply and so the only material before me is the affidavit evidence of Fatuma Ramadhani and the submission made.

From the strength of the affidavit in support of the application and the submission made, I must begin from the legal premise provided by Rule 10 governing the discretion guiding 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 constitutes good cause cannot be laid down by any hard and fast rules. The term *good cause* is a relative one and is dependent upon the circumstances of each individual case. It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion. See **Ratnam v Cumarasamy and**

Another (1964) 3 ALL ER 933 and **Regional Manager Tanroads Kagera v Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 CAT (unreported).

In **Ratnam's** case (supra) Lord Guest stated thus:-

"The rules of court must, prima facie be obeyed, and, in order to justify a court extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation."

The important issue for consideration in this application is whether or not the applicant has shown good cause for the delay to justify extension of time. I have carefully considered the affidavit in support of the application and the submission made. The main reason in this application is that the Law Firm engaged by the applicant at first, that is, Mashiku and Co. Advocates terminated her legal services to the applicant without

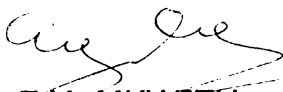
serving the respondent with a copy of notice of appeal and a letter to the Registrar applying for copies of the judgment, decree and proceedings as required in law. In my humble considered view this reason is valid and sound in law to warrant the Court exercise its discretionary power to grant the prayers sought.

In the result, the applicant would within fourteen days hereof serve the respondent with a copy of notice of appeal and a letter to the Registrar applying for copies of the judgment, decree and proceedings from the judgment and decree of the High Court in Land Case No. 48A of 2013. Costs of the application to abide the results of the appeal.

DATED at **DAR ES SALAAM** this 13th day of February, 2018.

R.E.S MZIRAY
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL