

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

CIVIL APPLICATION NO. 323/02 OF 2017

BANK OF TANZANIAAPPLICANT

VERSUS

**1. LUCAS MASIGAZWA
2. EVARIST MUZE
3. MARGRATH KUMALIJA** } **RESPONDENTS**

**(Application from the decision of the Court of Appeal of Tanzania
at Arusha)**

(Bwana, J.A)

dated 27th day of February, 2014

in

Civil Application No. 11 of 2013

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RULING

28th September, & 4th October, 2018

MMILLA, J.A.:

The applicant, the Bank of Tanzania is, through the services of Ms Maro and Company (advocate), applying for extension of time within which to serve upon the respondents copies of the written submissions. The application is brought under Rules 10, 22 (1), (8), 106 (13), 4 (2) (a) and (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by two affidavits, that sworn by Mr. Elvaison E. L. Maro, and the other one sworn by Ms Monica Patrick

Kessy, an employee of Ms Maro and Company, (Advocate) in her capacity as a Registry Clerk.

The brief background facts leading to this application as grasped from the affidavit sworn by Mr. Elvaison Maro are that on 19.12.2012, the High Court struck out Misc. Civil Application No. 86 of 2006 between the applicant and the respondents namely; Lucas Masigazwa, Evarist Muze and Magreth Kumalija, on the ground that it was incompetent. The dismissal order aggrieved the applicant and opted to appeal.

The case which is the subject of this application began in 1995. Then, the respondents were residents in Arusha Municipality in the applicant Bank's flats at Kaloleni Sanawari area. However, after ceasing employment with the applicant bank, the respondents re-located to places unknown to the former, thus occasioning difficulties in effecting service to them in respect of documents pertaining to this case generally.

On 22.3.2013, the applicant filed Civil Application No. 11 of 2013, in which she applied for extension of time within which to serve

the notice of appeal and the letter applying for necessary documents for purposes of appeal. She also applied for permission to serve them by Registered Post. That application was granted on 4.3.2014, after which they were served through that mode. However, they did not lodge their respective notices of full and sufficient addresses of service.

On 8.3.2017, the applicant's advocate filed written submissions in support of the pending appeal, and ought to have served copies thereof on the respondents by 22.3.2017, but they failed to do so because the respondents' physical addresses are unknown, hence the present *ex parte* application.

When the application came up for hearing on 28.9.2018, Mr. Elvaison Maro, learned advocate, appeared for the applicant bank. In his oral submission in Court, he recapped what he quipped in the already referred to affidavits in support of the application. He underscored the coverage of Ms Monica Patrick Kessy's affidavit concerning difficulties experienced in trying to serve the respondents, hence the delay which has necessitated the present application for extension of time.

I wish to begin the discussion by re-stating that the Court's power to extend time under Rule 10 of the Rules after expiry of the time prescribed by law is dependent upon the party moving it showing good cause for the delay. This power is discretionary, but such discretion must be exercised judicially, which means making a logically sound decision based on rules of law. That entails taking into consideration all the relevant factors and materials surrounding any particular case. These factors include the length of the delay, the reason for the delay, and whether or not there is an arguable case, among others – See the cases of **Ratnam v. Cumarasamy and Another** [1964] 3 All E.R. 933, **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No 13 of 2010, CAT and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014, CAT (both unreported).

In **Osward Masatu Mwizarubi's** case (supra), the Court observed at page 5 of the judgment that:-

*"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 party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion." [The emphasis is added].

The rationale for this was attempted in the old English case of **Ratnam v. Cumarasamy and Another** (supra) where it was stated that:-

"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."

In the present case, on the basis of the two affidavits in support of the application; that of Mr. Elvaison Maro and Ms Monica Patrick Kessy, as well as the oral submission advanced in Court; I am convinced, considering the several instances she made strenuous unsuccessful efforts to effect service on the respondents, that sufficient cause has been plausibly shown to attract the Court to grant the present application. In the circumstances, time is hereby extended to enable the applicant serve the written submissions to the respondents as prayed. Service of the said written submissions to be effected within a period of 15 days from the date of this ruling.

Order accordingly.

DATED at **ARUSHA** this 3rd day of October, 2018.

B. M. MMILLA
JUSTICE OF APPEAL

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


B.A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL