

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 484/01 OF 2017

PRAYGOD MBAGA..... APPLICANT

VERSUS

GOVERNMENT OF KENYA

CRIMINAL INVESTIGATION DEPARTMENT.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL OF TANZANIA.....2ND RESPONDENT

(Application for extension of time to file Civil Reference from
the decision of a Single Judge)

(Mussa, J.A.)

Dated the 13th day of September, 2013

in

Civil Application No. 103 of 2011

RULING

9th & 15th April, 2019

LEVIRA, J.A.:

The applicant, Praygod Mbaga, by notice of motion made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) is seeking for extension of time to file Civil Reference against the decision of a Single Justice in Civil Application No. 103 of 2011 on the ground that, Civil Reference No. 3 of 2013 filed earlier was struck out by the Court on the 10th day of October, 2017 for want of attachment of the decision of the Single Justice subject to Reference. The notice of motion

is supported by an affidavit deposed by Protace Kato Zake, counsel for the applicant. The application is uncontested by both respondents.

At the hearing of this application, counsel for both parties appeared on behalf of their clients. Mr. Protace Zake, learned counsel appeared for the applicant. The first respondent was represented by Mr. Charles Mutinda, learned State Counsel and the second respondent was represented by Ms. Rachel Magambo, learned State Attorney. Both respondents neither filed affidavit in reply nor written submission. However, Mr. Mutinda informed me that the first respondent does not object this application. On her part, Ms. Magambo having realised that they did not file affidavit in reply, she prayed for this matter to proceed ex parte against the second respondent. She exhibited that the second respondent does not have any problem with the application. Finally, counsel for both respondents opted that only the counsel for the applicant should submit in support of the application.

In his submission Mr. Zake opted to adopt and rely solely on the contents of the notice of motion and the affidavit as his submission. He prayed that this application be granted with costs in the cause as it is not contested. It has to be clear at the onset that, although this application is uncontested, I still need to examine as to whether the

applicant has been able to advance good cause to warrant extension of time sought.

In the notice of motion and paragraph 11 of the supporting affidavit, the counsel for the applicant states that Civil Application No. 103 of 2011 was dismissed by a Single Justice of the Court on the 23rd day of September, 2013. The applicant was not satisfied with that decision and therefore had to file Civil Reference No. 3 of 2013 on the 4th day of October, 2013. Unfortunately, on 10th day October, 2017 the said Reference was struck out by the Court for want of attaching the decision subject to a Reference as indicated in paragraphs 12 and 13 of the affidavit.

Tirelessly, the applicant is still eager to challenge the said decision by way of Reference. I am afraid, the applicant may as well not have his day before me. As indicated above, Rule 10 of the Rules under which this application is brought requires good cause to be shown by the applicant who seeks for extension of time, it provides:

*"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 to that time as so extended". [Emphasis added]

In the matter at hand, apart from giving background of the application, the applicant has said nothing regarding as to why he was late to lodge application for Reference. With respect, I do not think that this background amounts to good cause. Rule 62(1) of the Rules requires a party who is not satisfied with the decision of a Single Justice to apply for Reference within seven days after the decision of the Justice. There is no doubt that the applicant lodged the first application, Civil Reference No.3 of 2013 which was struck out by the Court on the 10th of October, 2017; and, he lodged the current application on the 27th day of October, 2017.

It is a settled principle that whoever is applying for extension of time, has to account for each day of delay. In the current matter, it is not stated as to why it took the applicant about 16 days to lodge this application. The unexplained delay in my considered opinion is unreasonable as it leaves a lot to be desired. In the circumstances

therefore, I find that the applicant has failed to show good cause to warrant extension of time for him to lodge the intended Civil Reference.

In the upshot, this application lacks merit and it is hereby dismissed with costs.

DATED at **DAR ES SALAAM** this 10th day of April, 2019.

M.C. LEVIRA
JUSTICE OF APPEAL

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


S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL