

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

CIVIL APPLICATION NO. 486/10 OF 2019

MUSTAFA ATHUMAN NYONI APPLICANT

VERSUS

ISSA ATHUMAN NYONI RESPONDENT

**(Application for extension of time for leave to appeal from the decision of the
High Court of Tanzania, at Songea)**

(Kwariko, J.)

dated the 11th day of September, 2014

in

Appeal No. 44 of 2013

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RULING

29th April & 13th May, 2020

MWANDAMBO, J.A.:

This is a somewhat peculiar application for extension of time to lodge an application for leave to appeal to this Court from a decision of the High Court at Songea in its appellate jurisdiction. The applicant has made the application under rule 10 of the Tanzania Court of Appeal Rules, GN. No. 368 of 2009 (the Rules) by way of notice of motion supported by the applicant's own affidavit.

The notice of motion discloses three grounds but ground one is the most relevant to this application in which the applicant contends that he delayed filing the instant application on account of a technical delay. The supporting affidavit comprises six paragraphs in an attempt to explain away the delay. Notably, the applicant avers that following the impugned decision, he made an application for leave before the High Court which was refused by Fikirini, J. on 9th April, 2015 and thereafter, his application by way of a second bite was struck out by the Court on 23rd August, 2019 for being time barred and hence this application. On the whole, the applicant avers that he has not sat idle in his resolve to challenge the decision of the High Court on appeal.

The respondent who is represented by M/s. Mwamgiga Law Chambers resists the application through an affidavit in reply contending that it is devoid of merit.

During the hearing of the application, the applicant appeared in person, unrepresented in the absence of the respondent who was duly served and indeed his advocate had filed a list of authorities a week earlier. There being no explanation behind the respondent's non- appearance, hearing proceeded in his absence in terms of rule 63 (2) of the Rules.

Being a layman fending for himself, the applicant had nothing substantive in support of his application. Instead, he urged me to be sympathetic to him and grant the application on the strength of his grounds in the notice of motion and the founding affidavit.

I have examined the contents of the affidavit and as already hinted at the beginning, this is a peculiar application in which the applicant has found himself compelled to seek extension of time which was not called for in the first place. Nevertheless, my role is to see whether there is enough material to amount to good cause for the Court's exercise of its judicial discretion under rule 10 of the Rules under which the application is predicated. Rule 10 of the Rules stipulates:-

"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."

There is no dispute that the applicant made his first application for leave to appeal before the High Court timeously. However, that application

was refused by the High Court on 9th April, 2015. Subsequently, on 23rd April 2015, the applicant filed an application before the Court on a second bite. However, that application was struck out for being time barred. My reading of the drawn order extracted from the ruling of the High Court (Fikirini, J) shows that the ruling refusing leave to appeal was delivered by the High Court on 9th April 2015. The applicant made his application on a second bite on 23rd April 2015 well within fourteen (14) days prescribed under rule 45(b) of the Rules. However, for reasons which have not been made apparent, the applicant omitted to annex a copy of the ruling and/or the drawn order to his application in Civil Application No. 351/17 of 2018. As a result of that omission, the Court found that the application was made out of time by reference to the applicant's own affidavit indicating that the ruling of the High Court was delivered on 9th March instead of 9th April 2015. It follows thus that the applicant has explained the reason for the delay between 9th April 2015 and the date on which the Court struck out his application. I am satisfied that the applicant has explained the reason for the delay consistent with ground one in the notice of motion that is to say; technical delay which has been held to be a valid reason by the Court's previous decisions including; **China Henan International**

Corporation v. Salvand Rwegasira, Civil Reference No. 22 of 2005
(unreported).

That said, I hold that the applicant has shown good cause within the context of rule 10 of the Rules. In the premises, I am inclined to exercise my discretion in the applicant's favour by granting the application as I hereby do. The applicant is accordingly ordered to file his application for leave to appeal before this Court within 14 (fourteen) days from the date of the delivery of this ruling. Costs shall be in the cause.


It is so ordered.

DATED at **IRINGA** this 12th day of May, 2020.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

The Ruling delivered this 13th day of May, 2020 in the absence of the Applicant duly notified and Ms. Jessey Mwamgiga, counsel for the Respondent is hereby certified as a true copy of the original.




E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL