

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

CIVIL APPLICATION NO. 270/01 OF 2020

FRANCONIA INVESTMENTS LTD..... APPLICANT

VERSUS

TIB DEVELOPMENT BANK LTD.....RESPONDENT

**(An Application for extension of time within which to lodge an appeal
out of the prescribed limitation period from the decision/decre
of the High Court of Tanzania at Dar es Salaam)**

(Muruke, J.)

Dated the 31st day of July, 2018

in

Civil Case No. 66 of 2015

RULING

15th & 30th September, 2021

KITUSI, J.A.:

The applicant Franconia Investments Ltd prays that I invoke my discretion under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), to grant her extension of time to appeal the decision of Muruke, J. in Civil Case No. 66 of 2015, out of time. The affidavit in support of the notice of motion taken by one Stevens Kosi Madulu, an advocate, raises two main reasons for the delay. These reasons shall be discussed after the following brief background of the matter;

The applicant sued the respondent for breach of contract in the said Civil Case No. 66 of 2015, but lost vide a judgment that was handed down

on 31st July, 2018. Intending to appeal that decision, the applicant applied for copies of judgment and decree for that purpose, and she was supplied with them on 31st January, 2019. However, she did not appeal immediately.

Back to the affidavit and the reasons for the delay. It is averred in the affidavit that after receipt of the requisite documents from the court registry, the applicant faced financial problems such that she could not hire an advocate for processing the appeal. He also blamed the delay on the court registry for not supplying her with the documents early enough.

In a reply affidavit taken by Mr. Menson Ngahatilwa, a Principal Officer of the respondent, the contention that the applicant had good cause for the delay is disputed. Instead, the applicant is being held responsible for his failure to timely apply for the supply of the documents.

At the hearing, the applicant was represented by Messrs. Michael Mahende and Julius Mukirya, learned advocates, while Ms. Hosana Mgeni and Mr. Felix Chakira, learned State Attorneys, represented the respondent. Mr. Mahende briefly submitted in support of the application on the basis of the two reasons, and cited **Yusufu Same & Another vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported) for the contention that financial constraints may be good cause for the delay. He

also cited the case of **Benedit Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported), to support the argument that delay in the supply of the necessary copies may constitute good cause warranting extension of time.

However, Mr. Mahende was unable to explain how did the deponent of the supporting affidavit personally know about the applicant's impecuniosity. He stated that the applicant is still in a financial crisis so much so that the learned counsel was acting under legal aid.

On the other hand, Ms. Mgeni submitted in opposition, making a reminder that the applicant has a duty of accounting for every single day of the delay and cited the case of **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application No. 4 of 2014 (unreported). She submitted further that the applicant has failed to demonstrate that she acted expeditiously after receipt of the documents on 31/1/2019. She pointed out that this application filed on 6/7/2020 came a year and a half later. She prayed for the dismissal of this application with costs.

In a short rejoinder, Mr. Mahende simply prayed that I should grant the application with no costs and, not surprisingly, the learned counsel appeared to throw in the towel.

I will decide this application only on the two points that stand out in the affidavit of Steven Maduhu. To begin with the point of financial constraints, it is true that it may constitute good cause if it is established as argued by Mr. Mahende, but that will very much depend on other attendant factors. The question is whether in this case the applicant has established that she faced financial difficulties.

In this case Mr. Madulu has not stated in his affidavit how he came by the knowledge that the applicant was facing a financial crisis. The law is clear that if an affidavit mentions another person, then that other person should also take an affidavit. See the case of **Sabena Technics Dr. Limited vs. Michael J. Luwunzu**, Civil Application No. 451/18 of 2020 (unreported) citing **Benedict Kiwanga vs. Principal Secretary Ministry of Health**, Civil Application No. 31 of 2000 and **NBC Ltd. vs. Superdoll Trailer Manufacturing Company Ltd**, Civil Application No. 13 of 2002 (both unreported also). In the same vein, I think, an advocate cannot purport to depose on a client's financial position but that such a deposition should be made by the client himself by affidavit.

My conclusion is that the fact of financial crisis on the part of the applicant was not established.

The second point is the alleged delay in supplying the applicant with the necessary documents. On this, it is enough for me to express my agreement with Ms. Mgeni that the applicant had a duty to account for each day of the delay. See the Court's decision in **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Karibu Textile Mills Ltd. vs. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016 and; **Yazid Kassim Mbakileki vs. CRDB [1996] Ltd Bukoba Branch & Another**, Civil Application No. 412/04 of 2018 (all unreported).

Therefore, since the applicant has not explained what happened between 31/7/2018 when the judgment was delivered to 19/9/2018 when she applied for copies of the necessary documents, she has no justification for blaming the court for the delayed supply of the documents on her. Likewise, she has not accounted for every day from 31/1/2019 when she was supplied with the documents to 6/7/2020 when she filed this application, a period of a year and six months. This is not to say, that the applicant has not even shown that she lodged a notice of appeal, probably a discussion for another occasion.

The application is, for those reasons, hopelessly lacking merit I shall make no order of costs, because the respondent appeared by state

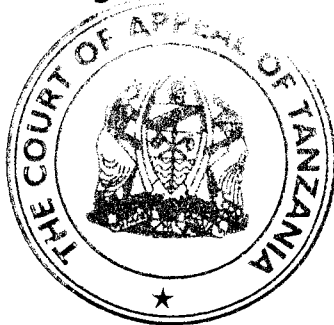
counsel, and Mr. Mahende's contention that he was rendering his service under legal aid, has not been challenged.

The application is dismissed with no order as to costs.

DATED at DAR ES SALAAM this 20th day of September, 2021.

I.P. KITUSI
JUSTICE OF APPEAL

Ruling delivered this 30th day of September, 2021 in the presence of Mr. Mukirya Julius, learned counsel for the Applicant and Mr. Daniel Nyakiha, learned counsel for the Respondent, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL