

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

CIVIL APPLICATION NO. 410/08 OF 2022

TANZANIA BREWERIES LIMITED APPLICANT

VERSUS

THE MINISTER FOR LABOUR

AND YOUTH DEVELOPMENT.....1ST RESPONDENT

THE ATTORNEY GENERAL2ND RESPONDENT

PENDO MASASI.....3RD RESPONDENT

(Application for extension of time to serve the 3rd respondent with copy of the
Application for Review arising from the Judgment and Decree of the
Court of Appeal of Tanzania at Mwanza)

(Ndika, Kwariko, And Fikirini, JJJJA)

dated the 28th day of July, 2021

in

Civil Application No. 28 of 2009

RULING

1st & 8th December, 2022

RUMANYIKA, J.A.:

In this application, I am asked to exercise my discretion under rule 10 of the Tanzania Court of Appeal Rules, 2019 (the Rules) to extend time for the applicant to serve the 3rd respondent with copy of the application for review of the Court's Judgment and Decree dated 28/07/2021 in Civil Appeal No. 34 of 2019. It is alleged that the applicant was the 3rd respondent in the said Civil Appeal No. 34 of 2019, in which the respondent immersed the

winner, which decision, as above indicated, the applicant undertakes to challenge by way of review filed on 23/09/2021. However, as deposed at paragraphs 3 and 4 of an affidavit of Lawrence Zakaria, the court process server, without being challenged, he several times attempted to trace and serve the third respondent through cellular phone number 0755 477 104 supplied by the latter but failed. Then, on expiry of fourteen day's limitation required under the Rule he filed the present application which is supported by an affidavit of Marina Mashimba.

At the hearing of the application on 01/12/2022, Ms. Marina Mashimba learned Counsel appeared for the applicant. Mr. Deodatus Nyoni learned Principal State Attorney who was assisted by Mr. Kitia Toroke, learned State Attorney represented the 1st and 2nd respondents, whereas, the 3rd respondent appeared in person unrepresented.

From the outset, Mr. Nyoni and the 3rd respondent supported the application for it had met the requirement of rule 10 of the Rules, upon which it was predicated. They urged me to be pleased to grant the application as presented by the applicant.

Ms. Mashimba submitted that the Court be pleased to grant the application as entirely as was supported by the respondents. Therefore, she,

for avoidance of doubts adopted the Notice of Motion and the supporting affidavit, much as she added that, for good reasons belatedly though, the 3rd respondent was long at last traced and served on 15/10/2021 and, subsequently the latter filed an affidavit in reply together with written submissions. Based on the foregoing, she urged me to find the application to be merited and grant it.

Having heard the parties sufficiently, the pertinent issue is whether the applicant has satisfied the conditions necessary, that is, good cause to warrant the Court's discretion to grant an order of extension of time, as required under rule 10 of the Court Rules. On different occasions it has been pronounced so by the Court for instance in **Laureno Mseya v. Republic**, Criminal Application No. 4/06 of 2016 at Mbeya and **Chiku Havid Chionda v. Getrude Nguge Mtinga**, as **administratrix of the estate of the Late Yohane Claude Dugu**, Civil Application No. 501/01 of 2018 at Dar es Salaam (both unreported), where we subscribed to among others, what we had said in a similar situation in an unreported case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010. In **Lyamuya** (supra), we stated factors constituting good cause for granting extension of time as follows; **one**, that the applicant must

account for each day of the delay, **two**, that the delay should not be inordinate, **three**, diligence of the applicant and **four**, whether there are other reasons such as illegality of the decision sought to be challenged.

It follows therefore, that, what was demonstrated and gathered at paragraphs 3 and 4 of an affidavit supporting this application and the corresponding affidavit of the said court Process Server was wisely readily supported by the respondents, as the applicant has assigned sufficient reasons therefore, good cause for its failure to serve the 3rd respondent with the copies of the application timeously. As such, the said Process Server could not have accessed and serve the 3rd respondent timeously under the circumstances.

Yet, there is another thing which I am feeling highly indebted to observe in passing. As indicated above, it is that, even when through cellular phone number 0755 477 104 the Court Process Server had contacted the 3rd respondent's wife to serve the husband, the wife continued to refuse service until the limitation period of fourteen days lapsed. It follows therefore, that, for the interest of timely justice and for avoidance of endless litigation, any party, who has been called and reached through his cellular phone registered under BVR, but, directly or indirectly, as the case may be refuses or avoids service, he shall rebutably deemed to have been duly served. Short

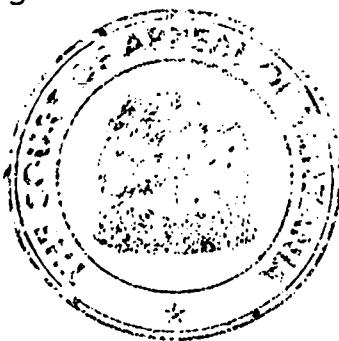
of which, it may suggest an indication of the courts to revert to the ancient stone-age technology and mode of service which cannot be accepted. Moreover, for the interest of speedy end of justice, on that one, the bottom line should be that, that duty of the applicant to serve the respondent and the latter's obligation to accept service for the timeous processing of a matter before court of law is two-way traffic and interdependent.


Having said as above endeavored, the application is merited and is hereby granted. I make no order for costs because the application was not opposed, and I would wish to promote the respondents' wisdom and spirit. Order accordingly.

DATED at MWANZA this 8th day of December, 2022.

S.M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered on 8th day of December, 2022 in the presence of the Mr. Galati Mwantembe, learned counsel for the applicant and Mr. Patrick Mheke, counsel for the respondent, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL