

IN THE HIGH COURT OF TANZANIA

AT DODOMA

**MISC. CIVIL APPLICATION NO. 17 OF 2008
(MISC. CIVIL APPLICATION NO. 13 OF 2006)**

ANTHONY KAMBENGA APPLICANT

Versus

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITEDRESPONDENT

7/04/2009 & 07/05/2009

RULING

HON. MADAM, SHANGALI, JUDGE.

The applicant **ANTHONY KAMBENGA** has lodged this application seeking for leave to file notice of appeal to the Court of Appeal out of time against the decision of this court (Hon. Masanche, Judge) dated 11th December, 2007 in respect of Miscellaneous Civil Application No. 13 of 2006. The application has been filed under the provisions of section 14 (1) of the Law of Limitation Act No. 10 of 1971 read together with section 95 of unspecified law. His chamber application has been supported with the affidavit deponed by the applicant in person.

The salient facts which constitute the background of this application may briefly be summarized as follows; Sometime back in may, 2006 the present respondent, **TANZANIA ELECTRICITY SUPPLY COMPANY** Filed a Miscellaneous Civil Application No. 13 of 2006 against the present applicant and three others. On 11th December, 2007 this court ruled in favour of the respondent and against the applicant. The applicant was aggrieved by the decision of this court and therefore was required to file his notice of appeal within a period of 14 days from the date of that decision. The applicant was late hence this application filed on 20th May, 2008 for extension of time within which to file his notice of appeal.

~~On 18th September, 2008, when this application was due for~~ fixing a hearing date the parties requested this court to urge the application by way of written submissions. Their request was duly granted and both complied with the scheduling order for filing their written submissions save for the applicant who forfeited his right to file a rejoinder.

In his written submission in support of the application, the applicant claimed that he was late to file his notice of appeal in time because during the material time he was encountered with family problems, to wit taking care of his dear wife who was seriously sick with no other person to attend her. He further stated that all along

he has been dealing with this case alone without any assistance from a lawyer and therefore, being a layman with serious family problems, he failed to lodge his notice of appeal in time.

In response, Mr. Msefya learned counsel for the respondent submitted that, the applicant has totally failed to submit substantive reasons to show why he delayed to file his notice of appeal to the court of appeal in time and why extension of time should be granted. Mr. Msefya contended that extension of time may only be granted where it is clearly established that the said delay was caused by sufficient cause. He argued that the reasons advanced by the applicant namely having family problems and being a layman with no lawyer to assist cannot be taken to be sufficient causes for delay. He insisted that despite of the fact that the alleged reasons has no proof, the High Court ruling was delivered way back in December, 2007 in his presence and filed his application after some good three months which indicate that he was not serious with the matter. To support his proportion Mr. Msefya referred to the cases of **YUSUFU SAME AND HAWA DADA VS. HADIJA YUSUFU, Civil Appeal No. 1 of 2002 (CA)** unreported; **BENEDICT MUMELLO VS. BANK OF TANZANIA, Civil Appeal No. 12 of 2002 (CA)** Unreported and **TANGA CEMENT COMPANY LTD VS. JUMANNE D. MASANGWA AND AMOSA MWALWANDA, Civil Application No. 6 of 2001 (CA)** Unreported.

The Learned counsel prayed for dismissal of the application for failure by the applicant to adduce sufficient and good reasons as to why the extension of time should be granted.

Without wasting much time, this application must fail for two good reasons. The first one is that, I earnestly agree with the respondents counsel that the applicant has totally and completely failed to adduce sufficient reasons to convince this court that the delay was not caused by his own sheer negligence or lack of diligence.

Being a layman with no lawyer to assist a litigant does not constitute a sufficient cause for delay. Likewise unsubstantiated claims that he was attending his ailing wife do not constitute a sufficient reason. In his own affidavit, which was equally countered by the respondent, the applicant stated that after the pronouncement of the ruling in court he was advised by the High Court Registry to go home and wait until the ruling was typed. As a result he went to Dar es Salaam without filing his notice of appeal. The copy of the ruling had nothing to do with the filing of the notice of appeal if he was really dissatisfied with the pronounced ruling against him.

In the case of **YUSUFU SAME** (Supra) the Court of Appeal observed that;

*"It is trile law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to **"sufficient cause"** has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant - - -"*

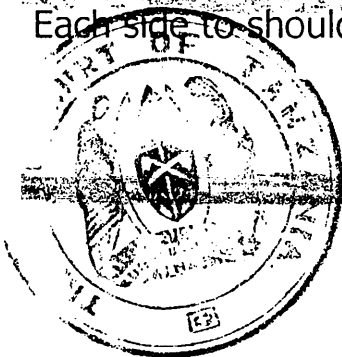
In the instant matter I am convinced that there is no sufficient reason or valid explanation for the delay of more than three months. What is apparent is lack of diligence on the part of the applicant.

The second reason as to why this application should be discredited is that it was made under a wrong law. This application was filed under section 14 (1) of the law of Limitation Act No. 10 of 1971. It is the stance of the law that the Law of Limitation Act does not apply in the matter of the Court of Appeal (See the cases of **STEPHEN M. WASIRA VS. JOSEPH SINDE WARIOBA AND**

ANOTHER, MWZ Civil Application No. 1 of 1998 (CA) and WETCU LTD VS. MICHAELK JUNGA Consolidated Tabora Civil Reference No. 1 & 2 of 2001 (CA) Unreported). Likewise Section 43 of the Law of Limitation Act provides that the Act shall not apply to applications and appeals to the Court of Appeal.

The proper law which should have been employed by the applicant is Section 11 (1) of the Appellate Jurisdiction Act, 1997 and Rule 8 of the Court of Appeal Rules, 1979.

For the above reasons this application is hereby dismissed. Each side to shoulder its costs.




M.S. SHANGALI
JUDGE

07/05/2009

Ruling delivered todate 7th May, 2009 in the presence of the applicant in person and in the absence of the respondent and his advocate.


M.S. SHANGALI
JUDGE

07/05/2009