

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 463 OF 2002
(Originating from HC Civil Case No. 463 of 2002)**

INTERBEST INVESTMENT CO.LTD APPLICANT

VERSUS

STANDARD CHARTERED BANK T LTD RESPONDENT

Date of last Order: 11.12.2014

Date of judgment 08.05.2015

RULING

Feleshi, J:

This is an application for leave to extend time within which to restart the appellate process following the striking away of the Appeal by the Court of Appeal on 13/10/2008. The application was filed by FK Law chambers, Advocates on behalf of the applicant and is duly supported by the affidavit of **DEUSDEDITH MAYOMBA DUNCUN**.

Submitting in support of the application Dr. Mapunda, the Learned Counsel who appeared for the applicant argued that the respondent filed a plaint in this court, Civil case No 463 OF 2002 claiming a sum of Tshs. 48,275 468/=. He argued that because of the amount claimed the applicant raised a preliminary objection alleging that the amount claimed

was below the pecuniary jurisdiction of the court. However, the court ruled out that this court had a requisite jurisdiction in entertaining the suit. Aggrieved with that decision, the applicant appealed to the Court of Appeal. He pointed out that the appeal was timely filed and scheduled for hearing on 8/11/2011. He either submitted that on that same date the appeal was struck out because the record of appeal was defective for failure to attach a copy of the written submission filed by the respondent. The counsel contended that since the applicant is still willing to prosecute his appeal, then basing on the provision of Rule 10 of the Court of Appeal Rules, 2009 he has brought the present application seeking for an extension of time to restart the appeal process.

The counsel submitted that it is established principle that in order for the court to extend time, good cause for same should be shown. What amount to good cause, the counsel referred this court to the case of **Aman Centre for Street Children V. Viso Construction Co. Ltd**, Civil appeal No. 195 of 2013 in which the court among other things held that the court is supposed to be objective when examining the good cause.

The counsel submitted that the applicant in this case had good cause to apply for extension of time;

Firstly, he argued that the appeal was merely struck out. He submitted that it is a well established principle that when an appeal is struck out it leaves open to the affected party to restart the appeal process afresh and if he is time barred, he must go back and apply for extension of time. To support his position, the counsel referred this court to a number

of cases including the cases of **Haruna Mpango & 902 others Vs. Tanzania Portland Cement Co. Ltd.**, Civil appeal No. 10 of 2007, **Elizabeth Steven and Salome Charles Vs. Attorney General**, Civil appeal no 4 of 2007 and that of **Tanganyika Cheapstore Vs. NIC (T) Ltd** (2005) TLR 338.

Secondly, the counsel argued that the intended appeal raises fundamental principles of law to be looked at by the Court of Appeal to avoid havoc in subordinate courts on what should be the pecuniary jurisdiction of the High Court. He stressed that this is a fundamental issue that needs to be addressed by the Court of Appeal.

Thirdly and lastly, the counsel submitted that the applicant had acted diligently in applying for extension of time. He pointed out that the application was made without undue delay from the date the appeal was struck out by the Court of Appeal.

On that basis therefore, the counsel urged this Court to grant the application sought.

Mr. Mutakyamilwa, counsel for the respondent vehemently opposed the application. On his part, he submitted that no good cause has been established by the applicant for the delay. The counsel submitted that as the record of appeal was prepared by the counsel for the applicant therefore his failure to attach the written submission as alleged was nothing but sheer negligence on his part. The counsel argued that at any rate negligence of the counsel does not constitute good and sufficient cause to warrant the extension of time. To strengthen his argument, the

counsel made reference to the case of **Umoja Village v. NBC**, Civil Appeal No 26 of 1996 and that of **Paul v. Berthunderson**, Civil Appeal No 7 of 2005.

Basing on the submission and the authorities he cited, the counsel urged this court to dismiss the application for lack of merit.

It is trite 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 judiciously and the overriding consideration is that there must be good and sufficient cause for so doing.

On ascertaining good and sufficient cause, 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 and lack of diligence on the party of the applicant (see **Dar es Salaam City Council v. Jayantilal P. Rajani**, (CAT) Civil Application No. 27 of 1987 and **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos Mwaiwanda**, Civil Application No. 6 of 2001 (all unreported)).

In the instant case, its undisputed fact that the Court of Appeal struck out the appeal on 8.9.2011. With the striking out the appeal, it meant the applicant was required to file a fresh application in the High Court seeking extension of time in which to give notice of appeal (see: **William Shija v Fortunatus Masha** [1997] TLR 213). In this case, time for seeking leave from this court had to be reckoned from 8.9.2011, the date the appeal was struck out.

It is on the court case record that the present application was filed on 8.11.2011 after the expiry of two months. There is no evidence on record showing the date when the applicant was served with a copy of the drawn order. He might have been served there in between. In that situation, the processing of the application in the two months period may not in the circumstance of the case be regarded as unduly long and without reason.

However, Mr. Mutakyamilwa in his submission forcibly submitted that the record of appeal to the Court of Appeal was prepared by the counsel for the applicant. He pointed out that his failure to attach the written submission as required by the law was sheer negligence on his party. He therefore urged this court to note that counsel's negligence has never been good and sufficient cause to warrant the court to extend the time sought.

Generally speaking, an error made by an advocate through negligence has not been considered good and sufficient reason for extension of time. This has been held in a numerous decisions of this court and that of Court of Appeal (see for instance, **Athuman Rashid v. Boko Omar** [1997] TLR 146 and **Salumu Sururu Nabahani v. Zahor Abdulla Zahor** [1988] TLR 41) some being cited by Mr. Mutakyamilwa in his submission. But, thought that is not a situation here, there are times, depending on the overall circumstances surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicant's counsel as was held by the Court of Appeal in

the case of **Felix Tumbo Kisima v. TTCL Ltd and another**, Civil application No. 1 of 1997(unreported)

In the case at hand, the applicant among other things, explained about the merit of the application. He argued that there is an issue of the pecuniary jurisdiction of the Court that entertained the suit. He contended that the high court had no pecuniary jurisdiction to entertain the suit by invoking the provision of section 13 of the Civil Procedure Code, Cap 33 R.E 2002, the point of which, Mr. Mutakyamilwa disputes. As the impugned decision was made by this Court, that in my unfeigned opinion, is one of those areas where the court is supposed to be objective when examining the good cause.

After careful consideration of the facts deposed in the affidavit filed in support of the application coupled with the detailed arguments made by the learned counsel for the applicant together with the picture which comes out, and the issue of jurisdiction involved worth of being considered by the Court of Appeal I for one, find that good and sufficient reason have been established to warrant this court grant the prayer sought. In the event therefore, the application is granted with costs.

For same reasoning above, I am invoking section 95 of the Civil Procedure Code, [Cap.33 R.E.2002] to suspend other legal processes before this Court and courts subordinate to it related to this case or which are incidental thereto, to allow expeditious disposal of the intended appeal which in one way or another cannot be determined without the original

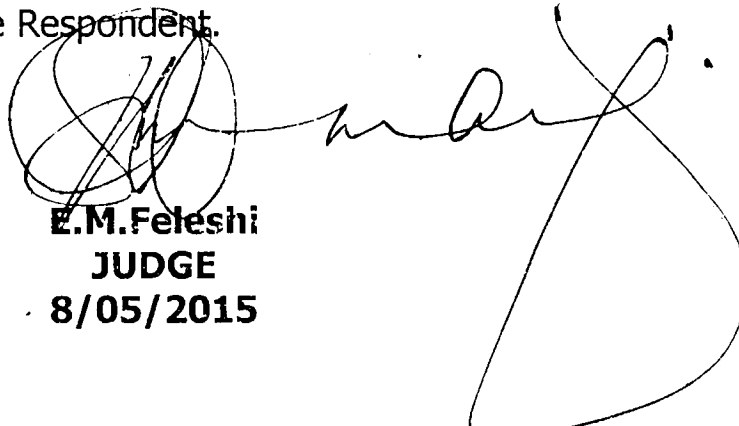
case file. The original record will inevitably be used to prepare the record of appeal. Ruled accordingly.

DATED at DAR ES SALAAM this 8th day of May, 2015.




E.M. Feleshi
JUDGE

Delivered in the court's Chamber in the presence of Messrs. Edson Mkisi holding brief of Ms Kapinga for the Applicant and Augustine Masonga, the Managing Director of the Respondent.


E.M. Feleshi
JUDGE
8/05/2015