

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

**MISC. CIVIL APPLICATION NO. 77 OF 2016  
(Arising from Civil Case No. 97 of 2009)**

**BADR EAST AFRICA ENTERPRISES LIMITED.....1<sup>ST</sup> APPLICANT  
PRISMA UNIVERSAL ITALIANA S.P.A.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ATTORNEY GENERAL (U.R.T)..... RESPONDENT**

**RULING**

**22<sup>nd</sup> Dec, 2017 & 22<sup>nd</sup> Febr. 2018**

**DYANSOBERA, J.:**

The applicants, Badr East Africa Enterprises Limited and Prismo Universal Italiana S.P.A seek extension of time within which to file a notice of intention to appeal against the decision of the Honourable Court (Mr. Justice Mwandambo) dated 16<sup>th</sup> December, 2015 but delivered on 18<sup>th</sup> day of December, 2015 in High Court of Tanzania (Dar es Salaam District Registry) Civil Case no. 97 of 2009 and costs of the suit. The application is supported by the two affidavits of Messrs. Jeffrey Emesu and Wilbert Basilius Kapinga, learned advocates. The respondent, the Attorney General, has resisted the application.

The application was heard in writing whereby Mr. Waziri Mchome, learned counsel filed a written submission in support of the application and Mr. Daniel Nyakiha, learned State Attorney submitted against the application.

According to the two affidavits in support of the chamber summons and the learned counsel's submission in support of the application, the reasons for the delay are that the applicants and their advocates did not have knowledge that judgment was delivered on 18<sup>th</sup> December, 2015 and that there was no prior notice to that effect. It is contended on part of the applicant that notice of delivery of judgment was their legal right and that there was no unnecessary delay in filing this application. In support of this legal position, this court was referred to Order XX rule 1 of the Civil Procedure Code, Cap. 33 R.E.2002 and case laws in the case of **Cosmas Construction Co. Ltd v. Arrow Garments** [1992] TLR 127 and Civil Application No. 263 "B " of 2015 between **Convergence Wireless Networks (Mauritius) Ltd and others v. WIA Group Ltd and others**.

Relying on his written submissions and the respondent's counter affidavit, Mr. Daniel Nyakiha stated that the applicants and their advocates

had knowledge of date of delivery judgment and that for the reasons unknown, they have failed to account for the delay. It was submitted on part of the respondent that had the applicants been diligent they would have made a follow up much earlier taking into consideration that they knew that by by court pronouncing judgment might not be the end of the case and that there might be further remedial actions for the aggrieved party including an appeal. citing the decision of the case of **Yussufu Same and Hawa Dada v. Hadija Yusufu** , Civil Appeal No. 1 of 2002 , learned State Attorney submitted that the applicants have failed to show any valid reason save the complaint that they were not informed on the date of the judgment. Further that, the applicants have failed to account for the delay of 45 days in which they were supposed to file a notice of appeal. this court was referred to the decision of Court of Appeal in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) insisting that the applicant must account for all the period of delay, the delay should not be inordinate and that the applicant must show diligence and not apathy,

negligence or sloppiness in the prosecution of the action that he intends to take.

Learned State Attorney asked the court to find the application for extension of time destitute of merit and dismiss it with costs.

I have considered the application, the affidavits in support and the counter affidavit together with the submissions. I have also taken into account the legal provisions and case laws referred to me.

It is the contention on part of the applicants that the delay in lodging a notice of appeal was caused by sufficient cause. The respondent, on the other hand wants the court to believe and found otherwise.

There is no dispute that power to extend time under section 11 of the Appellate Jurisdiction Act [Cap. 141 R.E.2002] is in the discretion of the court. Further that such discretion has to be exercised judicially and the overriding considerations being that there must be sufficient cause for doing so. Was there sufficient cause?

There is no dispute that the judgment by this court which was delivered on 18<sup>th</sup> day of December, 2015 was given in the absence of the appellants and their advocates. The applicants through Mr. Jeffrey Emesu have endeavored to demonstrate under paragraph 5 of his affidavit how

the record of this court indicated that they were not notified of the date of delivery of the judgment.

Order XX rule 1 of the Civil Procedure Code [Cap. 33 R.E.2002] clearly states that **"the Court, after the case has been heard, shall pronounce in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates."**

There is no evidence that the applicants and/or their advocates were served on the date the judgment was to be delivered. Service was the appellants' statutory rights. In the circumstances, the court has to exercise the discretion in favour of the applicants


There is nothing indicating that the applicants have deliberately seeking to evade or obstruct the cause of justice and as stated by the Court of Appeal in the case of **Omary Shaban Nyambu v. Dodoma Water and Sewerage Authority**, Civil Appeal No. 146 of 2016 (unreported), the discretion of the court must aim at avoiding injustice or hardships resulting from accidental inadvertence or excusable mistake or error but should not be designed at assisting a person who may have deliberately sought to it in order to evade or otherwise to obstruct the cause of justice.

The application was brought promptly after courts vacation and law day. There was, therefore, no inordinate delay.

Consequently, the application is granted, time within which to file notice of intention of appeal is extended and the applicant to lodge their notice within thirty days from today.

Costs to be in the appeal.

Order accordingly.

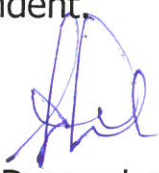


W.P.Dyansobera

JUDGE

22.2.2018

Delivered this 22<sup>nd</sup> day of February, 2018 in the presence of Mr. Waziri Mchome, learned counsel for the applicants and Mr. Charles Mtae, learned State Attorney for the respondent.



W.P.Dyansobera

JUDGE