

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

**CIVIL APPLICATION NO. 139 OF 2002**

**In the Matter of an Intended Appeal**

**1. DIAMOND FIELDS AUTOMOBILES  
HARDWARE  
2. JAYANTILAL PRAGJI RAJANI ..... APPLICANTS  
3. SUNIL AMRANTLAL RAJANI**

**VERSUS**

**THE LOANS AND ADVANCES REALIZATION  
TRUST..... RESPONDENT**

**(Application for extension of time from the  
decision of the LART Tribunal at D'Salaam)**

**(Msoffe, J.)**

**dated the 29th day of August, 2002  
in  
Tribunal Case No. 27 of 1999**

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R U L I N G**

**MUNUO, J.A.:**

The applicant, through the services of Mr. Bomani, learned advocate, instituted the present application for extension of time to appeal against the Ruling on the 29.8.2000 in LART Tribunal Case No. 27 of 1999, which overruled a preliminary objection to strike out the case.

Mrs. Rwebangira, learned advocate for the applicant, prosecuted the application. The respondent was represented by Mr. Kamugisha, learned advocate.

Counsel for the applicant adopted the affidavit of Mr. Mark Danhi Bomani in support of the application. At para 6 of the affidavit, the deponent stated that the delay in appealing against the Ruling complained of was caused by the delay of the Court in determining an application for leave to file the intended appeal, which application for leave to appeal was determined six days after the period of sixty days had expired. She cited the case of **Michael Lessani Kweka versus John Eliafye** (1997) TLR 152 (CA) wherein the Court held that:

- i) The Court had power to grant an extension of time if sufficient cause had been shown for doing so; and
- ii) In the case the applicant had shown reasonable diligence in correcting the error immediately upon discovery and this conduct warranted consideration for enlarging the time in his favour.

Counsel for the applicant further referred the Court to the case of **Fortunatus Masha versus William Shija and**

**Another** (1997) TLR 154 (CA) in which the Court extended the period of appeal because the applicant -

“had acted immediately after the Ruling of the Court striking out the first appeal.”

It is the contention of counsel for the applicant that in the present case the applicant pursued this application promptly after obtaining leave to appeal with due diligence so there is sufficient ground for extending the period of appeal.

On whether the application for leave was necessary, counsel for the applicant maintained that such leave was mandatory in view of the court’s decision in the case of **Salim Abdallah Chande t/a Rahma Tailors versus The Loans and Advances Realization Trust and Another**, Civil Appeal No. 49 of 1997, Court of Appeal of Tanzania (unreported) in which a single Judge held;

The Appellate Jurisdiction Act provides general jurisdiction of this Court but that does not prohibit specific legislations conferring appellate jurisdiction on this Court ---

**Chande's** case, the single Judge also held that the appeal did not require leave to appeal as it came from the LART Tribunal, which is like the High Court, in its original jurisdiction. Counsel for the respondent emphasized the same. Mrs. Rwebangira contended that leave to appeal is, and was, necessary because the intended appeal was on a matter which did not, and does not, conclusively determine the **LART** case in question, i.e. the intended appeal is on the rejected preliminary objection which was an interlocutory matter which could be appealed against at that time. The law changed later so appeals on interlocutory rulings and orders are now barred by Act No. 25/2002.

As the applicant has already obtained the required leave to appeal, counsel for the applicant prayed that the application be granted with costs.

Resisting the application, Mr. Kamugisha observed that the applicant had a right of appeal to this Court under the provisions of Section 20 (1) (2) of the LART Act as Amended by Act No. 5 of 1995 so it was not necessary for the applicant to waste time seeking leave for appeal to this Court. Contending that the application for extension of time lacks merit, counsel for the respondent pointed out that appeals on interlocutory matters like the intended appeal,

have since been prohibited by the provisions of Act No. 25 of 2002 so the application for extension of time is misconceived and ought to be dismissed with costs and let the LART case proceed on merit as ordered on the 29.8.2000.

The issue is whether there is sufficient reason for extending the period of appeal against the preliminary ruling in the material LART Tribunal case.

The reply to the above question is positive for the reasons. One, the Ruling complained of was determined on the 29.8.2000, about two years before the enactment of Act No. 25 of 2002 so the ruling could be challenged by way of appeal at the material time. Two, because the intended appeal is on an interlocutory matter, the necessary leave was duly obtained as evidenced by Annexure C to the affidavit in support of the application. Three, the delay to institute the intended appeal, as reflected at paragraph 6 of the affidavit in support of the application, was caused by the Court's delay in determining the application for leave which was determined six days after the period of appeal had expired.

For the reasons stated above, there are sufficient grounds for extending the period of appeal. The period of appeal is accordingly extended for 14 days from today, the

intended appeal to be filed by the 15<sup>th</sup> day of September, 2005.

Costs within the cause.

DATED at DAR ES SALAAM this 1<sup>st</sup> day of September, 2005.

E.N. MUNUO  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

( S.A.N. WAMBURA )  
**SENIOR DEPUTY REGISTRAR**