

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

CIVIL APPLICATION NO. 135 OF 2014

**COMMISSIONER GENERAL TRA APPLICANTS
VERSUS**

**1. RODGERS MHINA
2. CAPTAIN ALLY MAGESSA } RESPONDENTS**

(Application for Extension of time within which to file an Application for Restoration of Civil Appeal No. 118 of 2012 from the decision of the Court of Appeal of Tanzania at Dar es Salaam)

(Mbarouk, Mjasiri, And Massati, JJJ.A)

dated the 21st day of July, 2014

in

Civil Appeal No. 118 of 2012

RULING

18th & 26th March, 2015

LUANDA, J.A.:

On 21/7/2014 the Court dismissed Civil Appeal No. 118 of 2012 involving the current applicant (who was the appellant in that Civil Appeal) and the respondents for failure to enter appearance under Rule 112 (1) of the Court of Appeal Rules, 2009 (the Rules). But an appeal which has been dismissed under the aforesaid sub-Rule can be restored within thirty days of the decision if sufficient cause is shown (See Rule 112 (2) and (3) of the Rules). Unfortunately, the applicant was also unable to lodge an application for restoration of the appeal within the prescribed time of thirty

days after the decision of dismissal, hence this application for extension of time. So, this is an application for extension of time made under Rule 10 of the Rules to enable the applicant make an application for restoration of the appeal which was dismissed on the date mentioned supra.

When the application was called on for hearing, the respondents did not enter appearance and there is no information as to why they failed to turn up though they were duly served on 26/2/2015. In terms of Rule 63 (2) of the Rules, I decided to proceed hearing the application.

Submitting on behalf of the applicant, Mr. Primi Manyanga learned counsel said the reasons for the delay are contained in his affidavit in particular paragraphs 5 and 6. He accordingly prayed that the application be allowed and costs to be in the cause. Paragraphs 5 and 6 which Mr. Manyanga relied upon and which he deponed upon read, I reproduce:-

- 5) That Applicant at the time when the dismissed Appeal Case No. 118 of 2012 came for hearing, on **21st July, 2014** was being represented by **Advocate Jane Kimweri** who got sick on **18th July, 2014** and could not report to work until on **22nd August, 2014;**

6) That the Applicant could not immediately lodge an application for restoration of the dismissed appeal because the respective dismissal order was served on the Applicant a day before the lapse of the date of filing and that the respective person who was capable of deponing on the facts in support of the application for restoration was sick and out of duty. She reported on duty on 22nd August, 2014 which was a date beyond the statutory time limit for filing the application;

In terms of Rule 10 of the Rules this Court has wide discretionary powers in extending time to a party in the proceedings to enable him file his application out of time provided good cause is shown.

In our case as shown above the delay to file the application is the sickness of the then applicant's advocate one Jane Kimweri. But that evidence of sickness as reproduced supra came from Mr. Manyanga and who also verified the same to be true to his best knowledge. On carefully reading the affidavit, those statements ought to have come from the alleged Jane Kimweri and not from any one else unless it is shown that the

deponent saw her to be in that condition and that should be reflected in the affidavit. The source of information must be disclosed. In this case it is not shown at all as from where Mr. Manyanga got that information. It is settled that an affidavit for use in Court being a substitute for oral evidence, should only contain statements of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true (see **Uganda V Commissioner of Prisons, Ex-parte Matovu** [1966] E.A. 514).

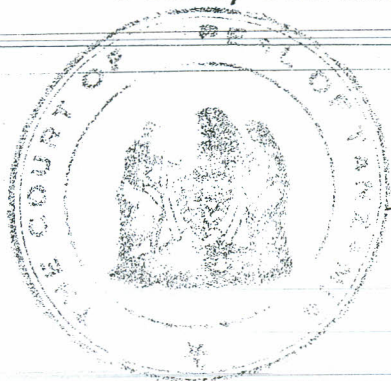
In view of the foregoing therefore, since the affidavit accompanying the notice of motion is incurably defective, the application has no leg to stand on. The same is struck out.


I make no order as to costs.

DATED at DAR ES SALAAM this 23rd day of March, 2015.

B.M. LUANDA
JUSTICE OF APPEAL

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




E.Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL