H/C DODOMA

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 247/2000

TANZANIA ZAMBIA RAILWAYS AUTHORITY .....APPLICANT

V E R S U S

RAPHAEL CHANDE & 28 OTHERS .....RESPONDENT

RULING

[illegible], J.

This is a dual application by Tanzania Zambia Railway Authority (Tazara), the applicant for extension of time within which to apply for leave to appeal to the Court of Appeal against the decision of Kaganda (Mrs) Principal Resident Magistrate extended Jurisdiction in Civil Appeal No. 66/2000 [illegible] as leave to appeal to the Court of Appeal. The application supported by the affidavit of Genevieve Nuamatovu Kato learned Advocate has been filed under Section 14 of the Law of Limitation Act 1971 and Section 4(1)(c) of the Appellate Jurisdiction Act 15/79 as amended, Rules 3, 8 and 43(a) of the Court of Appeal Rules and any other enabling provisions of the law.

It is deponed on behalf of the applicant by Mrs Kato learned advocate that there was delay in obtaining copy of judgment and proceedings until November 3rd, 2000, a factor which caused delay for the applicant to file the chamber summons on 8th Nover 2000. It is the contention of Mrs Kato learned Advocate in support of the application that the time for lodging the appeal begins to run from the date when such documents are made available. Applicant has cited the case of Mary Kimaro Vs. Khalfan Mohamed [1995] TLR 202 202 in support of his contention. As regards the appeal itself it is contended by the appellant that the appeal has a good chance of success in view of the fact that the judgment of the District Court was made per incuriam and further that a contentions point of law exists on whether the provisions of accomodation and salary to an employee whose service has been terminated should be accompanied by the provisions of daily substance allowance.

On the above grounds the applicant prays for grant of extension of time to file the appeal.

The respondents, Raphael [illegible] and 28 others, through the services of Maleta and [illegible] Advocates have opposed the application, contending inter alia, that no sufficient reasons have been given for the delay in filing the application. On the contrary the respondents assign negligence on the part of the applicant on the delay to collect the copy of judgment and proceedings. In addition while the learned Advocates for the respondents concede that limitation of time to appeal begins to run from the time of supply of documents necessary for the purposes of framing a sound memorandum of appeal, yet the facts on the ground [illegible] date that the application was filed thirty seven [illegible] the ruling by Kasanda (PRM) extended jurisdiction was certified and ready for collection on 2/10/2000. The respondents contend that the application for extension of time to lodge an appeal is [illegible] and it offends the requirements of Rule 7(1) of the Court of Appeal Rules. Furthermore it is submitted for the respondents that in determining whether or not an application for leave to appeal out of time should be allowed, the court has to consider reasons for the delay as well as the likelihood of success of the intended appeal. No such considerations exist in the present application in the considered view of the respondents.

It is evident from the facts on the record that the applicant cannot escape to shoulder the blame for the delay in filing the application for leave to appeal within the statutory period of fourteen days of the decision. While the decision of Kasanda PRM extended jurisdiction was delivered on 12/9/2001 it was due and ready for collection on 2/10/2000 upon certification by the Resident Magistrate Court. In event the application for leave ought to have been filed on or before 16th October, 2000 that is within fourteen days of the decision. The applicant has assigned no reason at all as to why he delayed in filing the application for leave to appeal to warrant consideration for the [illegible] extension of time.

In it an established view of the courts in our jurisdiction that there must be good and convincing reasons to justify the grant of extension of time. In the absence of good and convincing reasons the application by the applicant for extension of time must fail. Accordingly it is rejected with costs. As the rejection of the application for extension of time affects the accompanying application for leave, there is no need to address the submissions on it.

On the foregoing reasons, the application for extension of time is dismissed for want of merit and with costs.

It is so ordered.

S. EKEMA

JUDGE

Court: Ruling delivered this 22nd March, 2002 before Mrs Kato learned Advocate and the respondent.

S. EKEMA

JUDGE

22/03/2002

Time runs from date endorsed on ruling or date when ruling is available, and not from date of actual collection.

THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 36 OF 1996

(From Employment Civil Cause No.37 of 1993 at the RM's Court of D'Salaam,Kisutu - Ruhangisa-RM)

TANESCO LTD ..... APPELLANT

versus

KASSIM J.R. KAMBAYA ..... RESPONDENT

J U D G M E N T.

MAPIGANO, J:-

An ex-parte judgment was entered by the Resident Magistrate's Court at Kisutu on 30/7/93 in favour of the plaintiff, who is now the respondent, upon the default of the defendant in appearance when the suit was called for hearing. On 29/9/93 the defendant, now the appellant, presented an application for setting aside the ex-parte decree to that court. It was rejected by the court on the ground that it was time-barred. On 1/10/93 the appellant took out a chamber summons seeking an extension of time to file an application for setting aside the ex-parte decree. In its ruling delivered on 2/12/93 the court granted the application. Efforts which were made by the respondent to have that decision upset by the High Court in a revisional proceeding were unsuccessful. The order of the High Court (Kyando,J) was pronounced on 27/9/94.

It was not until 18/4/95 when the appellant filed the application to set aside the ex-parte decree. The application was resisted by the respondent, again on the ground that it was time-barred. On 29/9/96 the court sustained the objection and dismissed the application. The appellant has now come to this Court on appeal and it sets out several grounds for reversing the decision of the learned magistrate (Ruhangisa RM). In his ruling the magistrate has described the proceedings in this case as ones which have suffered from a delay syndrome. He is right, and it is sad to observe that the syndrome has not disappeared.

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This appeal was instituted on 1/4/96 and the respondent has once again raised the point of limitation. His assertion is that the appellant obtained a copy of the ruling appealed against on 30/10/95. That is the day on which the fee thereof was paid and an exchequer receipt issued. Accordingly, the respondent contends that the prescribed period of limitation has expired, such period being 45 days. In reply Mr. Nyange counsel for the appellant has deponed to the fact that when he paid the fee on 30/10/95 the copy of the ruling had not been prepared and that in actual fact the appellant received the document on 21/3/96.

I accept Mr. Nyange's word. But the problem is what appears at the foot of the certified copy of the ruling filed in this proceeding, which denotes that by 25/1/96 the copy of the ruling was available for collection. Section 19(2) and (3) of the Law of Limitation Act provides that in computing the period of limitation prescribed for an appeal, the period of time requisite for obtaining a copy of the decree or order appealed from, as well as the time requisite for obtaining a copy of the judgment on which it is founded, must be excluded. The expression "time requisite" is not defined in the Act, but I take it to mean time properly and reasonably required in that respect. It follows that any period which need not have elapsed, if the appellant had taken proper and reasonable steps to obtain the document, should not be regarded as requisite. As Chitaley and Rao say in their commentaries on an identical provision of the Indian Limitation Act of 1908, in taking delivery of such document any delay of the party subsequent to the date on which it is ready is not time requisite for obtaining the same, and consequently the time between the date on which it is ready and the date on which it is actually taken delivery of by the party cannot be excluded.

I must, therefore, sustain the respondent's objection that this appeal is barred by limitation. It is dismissed with costs.

Delivered.

Mr. Nyange for the Appellant
Mr. Khald for the Respondent.

D. P. MAPIGANO
JUDGE
14/5/97