

Citation	Parties	Legal Principles Discussed
CIVIL APPLICATION NO. 96 OF 2007- COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM- NSEKELA, J.A.	REGIONAL MANAGER, TANROADS KAGERA Vs. RUAHA CONCRETE COMPANY LIMITED- (Application for Extension of Time to lodge an application for leave to appeal from the Decision of the High Court of Tanzania, Commercial Division, at Dar es Salaam- Miscellaneous Commercial Cause No. 18 of 2006-Luanda, J.)	Sufficient reason to extend the time to lodge an application- What constitutes " <i>sufficient reason</i> " cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules: see also- Ratna v Cumarasamy and Another (1964) 3 All ER 933, Lord Guest had this to say at page 935A.

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

CIVIL APPLICATION NO. 96 OF 2007

REGIONAL MANAGER, TANROADS KAGERA APPLICANT

VERSUS

RUAHA CONCRETE COMPANY LIMITED RESPONDENT

**(Application for Extension of Time to lodge an application
for leave to appeal from the Decision of the High Court of
Tanzania, Commercial Division, at Dar es Salaam)**

(Luanda, J.)

dated the 11th day of June, 2007

in

Miscellaneous Commercial Cause No. 18 of 2006

R U L I N G

19 September & 24 December, 2007

NSEKELA, J.A.:

This is an application by notice of motion brought under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 RE 2002 and Rules 8 and 43 (b) of the Court of Appeal Rules, for an order for the extension of time within which to lodge an application for leave to appeal. The application is supported by an affidavit sworn by Mr. Kenan Komba, learned advocate for the applicant.

In Miscellaneous Commercial Cause No. 18 of 2006, the High Court, (Luanda, J.) refused to grant the applicant leave to appeal to this Court. This was on the 11.6.2007 and not on the 11.7.2007. In terms of Rule 43 (b) the applicant had to make another application to

the Court within fourteen (14) days of that refusal, that is the 25.6.2007 at the latest. Mr. Komba does not dispute the fact that he lodged the notice of motion out of time on the 11.7.2007. This is Civil Application No. 96 of 2007, the subject matter of this application. In order to appreciate the grounds advanced by Mr. Komba, I take the liberty to reproduce paragraphs 8 to 14 of his affidavit in support of the notice of motion. It reads –

- “8. That on 11th July (sic) 2007 the trial court refused to grant the leave to appeal to the Court of Appeal by a dismissal whose ruling and the extracted decree are collectively attached hereto and marked as Annex TRDA 7.
9. That the ruling and extracted decree refusing to grant leave were made available to the applicant on 20th June 2007 upon notification from the Registrar of the High Court, Commercial Division that the same were ready for collection upon payment of the necessary fees
10. That upon receipt of the ruling and decree the applicant prepared its application and lodged it

with the Registry of the Court of Appeal on 25th June 2007.

11. That after the applicant had lodged the application with the registry it was forwarded to the Registrar of the Court of Appeal for scrutiny prior to the payment of the necessary fees.
12. That due to the administrative process of scrutiny, the court fees were paid on 28th June 2007 after the Registrar had on 27th June 2007 directed that the application be admitted upon payment of the court fees. A copy of the Minute Sheet of the Court of Appeal indicating the dates the application was lodged in the Registry, forwarded to the Registrar for scrutiny and when he (sic) Registrar directed it be admitted upon payment of the necessary court fees is attached hereto and marked as Annex TRD 9.
13. That the delay in admitting the application as a result of administrative process of scrutiny was beyond the applicant's control and this is a sufficient cause to warrant this court to enlarge time within which the applicant is to file its

application for leave to appeal out of time after the applicant's application for leave to appeal was refused by the High Court, Commercial Division, DSM (sic).

14. That though the application was lodged by the applicant in the registry of the Court of Appeal on 25th June 2007, the delay resulting from administrative process of scrutiny was not taken into account as the application was finally indicated to have been lodged on 28th June 2007 and not 25th June 2007 when it was received at the said Registry. A copy of an extract admitted application registered as Civil Application No. 87 of 2007 is attached hereto as Annex TRDA 10."

If I may pause here for a moment, it is Civil Application No. 96 of 2007 that is before me and not Civil Application No. 87 of 2007. This might help to clear the apparent confusion in Mr. Komba's submissions. This takes me to Rule 8 of the Court of Appeal Rules which provides –

- "8. The Court may for sufficient reason extend the time limited by these Rules or by any decision

of the Court or of the High Court for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

What constitutes "*sufficient reason*" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules. In the case of **Ratna v Cumarasamy and Another** (1964) 3 All ER 933, Lord Guest had this to say at page 935A –

"The rules of court must, *prima facie* be obeyed, and, in order to justify a court extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which

would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation.”

The relevant material before me is the affidavit in support sworn by Mr. Komba, learned advocate. The notice of motion was filed on the 11.7.2007. Mr. Komba’s contention is that court fees was paid on the 28.6.2007 because of the inefficiency of the court registry where the documents were received on the 25.6.2007 and so the payment of fees should have been processed on the same day. This is evident from paragraphs 10, 13 and 14 of Mr. Komba’s affidavit. Let me at this juncture refer to an affidavit in reply filed on the 18.9.2007 by Mr. Mtango Jotham Andrea Lukwaro learned advocate for the respondent. Paragraphs 6 and 7 are in the following terms –

“6. That even if the approval for admission of the application was made on 27.6.2007 there is no explanation to show why the application was not lodged until 11th July, 2007.

7. That paragraph (sic) 13 and 14 of Mr. Komba’s affidavit are disputed and the respondent contends that if the approval of the Registrar

was made on 27.6.2007 the application ought to have been lodged before the 11th July, 2007.”

I have seen Annex TRDA 9 to the notice of motion referred to in paragraph 12 of Mr. Komba’s affidavit. It is a Minute Sheet. This is not affidavit evidence which can be acted upon by the Court. The registry officials concerned should have sworn/affirmed affidavits to that end. I have also seen Annex TRDA 10 referred to in paragraph 14 of Mr. Komba’s affidavit. This is a notice of motion in Civil Application No. 87 of 2007 made under Rule 43 (b) of the Court of Appeal Rules. As stated earlier on, what is before me is Civil Application No. 96 of 2007 which was filed on the 11.7.2007. Luanda, J. made his decision on the 11.6.2007 refusing leave to appeal. A fresh application should have been made on by the 25.6.2007 at the latest. The applicant had the documents he wanted from the Registrar since the 20.6.2007 and sat on them. He has not given any reasons let alone sufficient reasons to explain the delay. He moved into action on the last day for filing the application and engaged himself in an undignified attempt to shift the blame to the Court while the delay was on account of his own sloth. It is my

considered view that the applicant has advanced no sufficient reasons to account for the delay to the satisfaction of the Court.

In the event, I do hereby dismiss the application with costs.

DATED at DAR ES SALAAM this 19th day of December, 2007.

H. R. NSEKELA
JUSTICE OF APPEAL

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

(I. P. KITUSI)
DEPUTY REGISTRAR