

Citation	Parties	Legal Principles Discussed
CIVIL APPLICATION NO.56 of 2007 Court of Appeal of Tanzania at Dar es Salaam. Munuo, J.A	TANZANIA SEWING MACHINES COMPANY LIMITED Vs. MJAKE ENTERPRISES LIMITED. An application for the extension of time from the ruling and order of the High Court of Tanzania (Commercial Division) at Dar es Salaam by Massati, J	1) Sufficient ground for granting a party extension of time, to appeal as per rule 8 and rule 3(2)(b) of the Court of Appeal rules, 1979 2) Whether an error caused by the officer of the Court (Registrar) can constitute a ground to grant extension. - Case of NALOGWA ZAKARIA Vs.WANDOA MSUNZA, Civil Appeal No.27 of 1995. - CALICO TEXTILE INDUSTRIES LTD (1983) Vs. PYARALIE SMALL PREMJI (1983) TLR 28. - RATMAN Vs. CUMARASAMY and ANOTHER (1964) 1 all E.R 933 AT PG.935

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

CIVIL APPLICATION NO. 56 OF 2007

TANZANIA SEWING MACHINES COMPANY LIMITED.....APPLICANT

VERSUS

NJAKE ENTERPRISES LIMITED.....RESPONDENT

**(Application for extension of time from the Ruling and Order
of the High Court of Tanzania (Commercial Division)
at Dar es Salaam)**

(Massati J.)

**dated 10th August, 2006
in**

Commercial Case No. 7 of 2003

RULING

21 September & 1 November, 2007

MUNUO, J.A.:

In the Notice of Motion, the applicant sewing machine company, through the services of Mr. Rweyongeza, learned advocate, seeks extension of time to file a Notice of Appeal against the decision of Massati, J. in Commercial Case No. 7 of 2003 at the Commercial Division of the High Court of Tanzania, on the 10th August, 2006 in which the learned judge refused to extend the period of appeal against the judgement and decree in the material suit. The ground for applying for extension of time is stated in the Notice of motion thus:

".....that the applicant had lodged the appeal within time but the decree accompanying the appeal was not signed by the trial judge, a defect that resulted in the appeal being struck out and the

applicant has since, then bona fide been trying to reinstitute the appeal.”

The application is supported an affidavit deponed to by one Juma Mpingwa, the Managing Director of the applicant, the Tanzania Sewing Machines Company Limited.

In the main suit, the respondent successfully sued the applicant for the repossession of the property on Plot No. 111 Block A Section F Arusha Municipality under Title No 1439. The learned trial judge decreed that the directors of the applicant company should sign the Transfer of the Title to the respondent. The applicant, its servants and agents were ordered not to interfere with the quiet procession of the suit land. Not satisfied with decision of the High Court, the applicant filed a Notice of Appeal within the statutory 14 days for preferring an appeal. However, the Notice of Appeal was subsequently struck off for want of a properly signed decree. An application for leave to appeal to this Court was also struck off for want of prosecution but it was thereafter reinstated and is currently reported to be pending determination in the High Court. after the

Notice of Appeal was struck off for want of an accompanying decree, the applicant applied for extension of time to appeal. Massati, J. refused to grant extension of time. Hence the present application for extension of the period of appeal under the provisions of Rules 8 and 3(2) (b) of the Court Rules, 1979.

Mr. Mkoba, learned advocate for the respondent resisted the application. He filed a counter affidavit deposed to by one Japhet Lema, the Managing Director of the respondent company, substantially conceding that the Notice of Appeal was struck out due to the defective decree. Counsel for the respondent urged that the application be dismissed because the applicant inordinately delayed the application for eight months which delay rendered the application hopelessly time barred. He cited the case of Nalogwa Zakaria versus Wandoa Msunza, Civil Appeal No. 27 of 1995 (unreported) in which the Court held that ignorance of the law is not a justifiable cause for extending the period of appeal. The same was also held in the case of Calico Textile Industries Ltd (1983) versus Pyaraliesmail Premji (1983) TLR 28 wherein the Court stated that:

"Failure of a party's advocate to check the law is not sufficient ground for allowing an appeal out of time."

Further urging the Court to dismiss the application, Mr. Mkoba cited the case of Godwin Ndewasi Karoli Ishengoma versus Tanzania Audit Corporation (1995) TLR 200 in which the Court held:

"The Rules of Court must prima-facie be obeyed and in order to justify extending time during which some step in the procedure requires to be taken there must be some material on which the court can exercise its discretion."

The Court cited the case of Ratman versus Cumarasamy and another (1964) 1 All E. R. 933 at Page 935 wherein it was held that:

"The rules of court must prima facie be obeyed and, in order to justify a court in

extending time during which some step in procedure require to be taken there must be some material on which the court can exercise its discretion. If the law were otherwise any party in breach would have an unqualified right to extension of time which would defeat the purposes of the rules which is to provide a timetable for the conduct of litigation..... Rules are made to be followed. In the present case the respondent's delay in filing his notice of appeal was due to an over sight, this cannot be said with any stretch of imagination to be good reason for the court to exercise its discretion under Rule 3 of the Court of Appeal Rules."

The issue is whether there is sufficient cause for enlarging the period of appeal in the present case.

I agree entirely, with the holding in Ratman's case in that rules of court must be followed and there must sufficient ground for granting a party extension of time to appeal. I hasten to say here that the present case is distinguishable from Ratman's case because in this case, the Registrar issued a defective decree to the applicant. The defective decree was not signed by the learned trial judge which omission rendered the appeal incompetent. The error, it will be noted, was caused by the Registrar, an officer of the Court. It took sometime for the trial court to issue a properly signed decree to the Applicant. In that regard, the latter cannot be held liable for delaying the matter.

Under the circumstances, I find that the trial court's omission to issue a properly signed decree to the applicant occasioned the delay in reinstating the Notice of Appeal. This, in my considered view, is sufficient ground for extending the period of appeal. I, therefore, accordingly grant extension of time to file a Notice of Appeal. The Notice of Appeal to be filed within 14 days from to day.

Costs within the cause.

DATED at DAR ES SALAAM this 1st day of November, 2007

E. N. MUNUO
JUSTICE OF APPEAL

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

S.M. RUMANYIKA
DEPUTY REGISTRAR