

TANZANIA / JUDGMENT

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IN THE COURT OF APPEAL OF TANZANIA AT ZANZIBAR CIVIL APPLICATION NO. 992/15 OF 2023 GHALYA SHAABAN SALIM..... APPLICANT VERSUS ZANZIBAR CONNECTION CO. LIMITED (COMNET).....RESPONDENT (Application for extension of time to serve the respondent the memorandum and record of appeal in an appeal from the ruling of the of the High Court of Zanzibar, Industrial Division, at Tunguu) £Suwedi J.) dated the 8th day of September, 2023 in Civil Application No. 4 of 2022

RULING

23rd & 30,h April, 2024 MDEMU. J.A.: Before me is an application for extension of time within which the respondent herein be served with the memorandum and record of appeal. The application is by way of notice of motion accompanied by the supporting affidavit deposed by one Saleh Nassor Abdi, learned advocate for the applicant. The respondent neither appeared at the hearing of this application nor filed their affidavit in repiy opposing this application despite being served in person on 15th April, 2024 as per the endorsement in the court summons dated 4thApril, 2024. On that account, Mr. Abdi who appeared at the hearing i to represent the applicant prayed hearing of the application to proceed in terms of rule 63 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). I acceded to the prayer and gave an order to that effect. Persuading me to grant the said application as prayed, the learned counsel first adopted the notice of motion, supporting affidavit and annexures thereto urging me to allow the application, more so as the respondent never contested it by way of an affidavit in reply. He further submitted that, as per the depositions in the supporting affidavit, there are two registered grounds for extending time. First, is failure on the part of the Deputy Registrar to supply to the applicant the filed memorandum and record of appeal. According to the learned counsel, it was until 30th November, 2023 when the said documents were availed to the applicant from 14th November, 2023 the date which he filed those documents in Court. By then, the learned counsel intimated, the seven days within which to serve the respondents the requisite documents were not in his hands. The second ground is in respect of illegality which, in his argument, the impugned decision as spotted in paragraph 10 of the 2 supporting affidavit, is not free from errors, thus the need for intervention by this Court in the event time is extended. I heard the applicant's counsel in his persuasive move to have time enlarged. This application, as argued by Mr. Abdi, is not opposed. The respondent never filed an affidavit in reply nor entered appearance at the hearing despite being duly served. Regarding grounds for enlargement of time, it is clear according to the

supporting affidavit that, the applicant was not given the filed documents on the date he filed. Instead, it was until 30th of November, 2023 when he received such documents. As said, the documents were duly lodged as from 14th November, 2023. As submitted by Mr. Abdi, the seven days within which the said documents were to be served to the respondent had already expired. This is a legal requirement as enshrined under rule 97 (1) of the Rules which reads, thus: "P7 (1) The appellant shall, before or within seven days after lodging the memorandum of appeal and the record of appeal in the appropriate registry, serve copies of them on each respondent who has complied with the requirement of rule 86" Since, after filing, the applicant was not given the requisite memorandum and the record of appeal until the expiration of seven days, then in the period within which the applicant was supposed to serve such documents, obviously, he had nothing in his possession to avail to the respondents. Let Paragraph 5 of the supporting affidavit speak of itself regarding this fact: "5. that on 14th November, 2023 when the applicant filed the memorandum and record of appeal, the Deputy Registrar was absent and on the following day when the applicant went to collect her copies, she was informed by the registry that the Deputy Registrar had not yet finished with going through the memorandum and record of appeal and once satisfied with, the applicant will be informed, the situation that lasted till 30th November, 2023" Essentially, what is required of the applicant under rule 10 of the Rules is to show sufficient cause or explanation within which the Court may exercise its discretion on whether or not to extend time. In *Kalunga and Company, Advocates v. National Bank of Commerce Limited* [2006] TLR 235, a Single Justice of Appeal, regarding the use of discretionary power to extend time and the duty of the applicant in an application for extension of time held that: 4 "Under Rule 8 of the Court of Appeal Rules 1979, the Court has a wide discretion to extend time where the time has already expired, but where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material upon which the Court may exercise the discretion given. In the instant application, the applicant as per the contents of the supporting affidavit explained that the memorandum and record of appeal were not served to the respondents within the dictated seven days because the Deputy Registrar did not supply to him the said document on the day they were filed or to some other days before expiration of seven days. When the documents reached the applicant on 30th November, 2023, for sure, time to serve the respondents had already expired. According to the record, since the applicant lodged the memorandum and record of appeal on 14th November, 2023, seven days dictated under rule 97 (1) of the Rules expired on 21st November, 2023. This explanation of the applicant, in my considered view, contain sufficient cause. As it is, this ground alone suffices to dispose of the whole application. I am not therefore going to consider the ground on illegality deposed in paragraph 10 of the supporting affidavit because it is not clear if the applicant pleaded illegality or the likelihood of success of the appeal. Let the said paragraph in the supporting affidavit speak of itself as hereunder; "10. that the applicant is very much confident that once her intended appeal is heard by this Court, it has a prima facie likelihood of success as the High Court ruling is problematic and full of errors!" In view thereof, this application is hereby allowed. Time to serve the respondent with the memorandum and record of appeal is extended for seven days from the date of this ruling. Given the circumstances, I do not prescribe an order as to costs. Ordered accordingly. DATED at Z A N Z I B A R this 29th day of April, 2024. G. J. MDEMUSITICHE OF A

PPEAL The Ruling delivered this 30th day of April, 2024 in the presence of the Mr. Saleh Nassor Abdi, counsel for the Applicant and in the absence of the Responded ' ' “ r' J ~s a true copy of the original. >\ D. R. LYIMO y jp U T Y R EG IS TR A R & Q U R T O F A PPEAL 6

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