

TANZANIA / JUDGMENT

# 20061213 TZCA Dar es Salaam

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i.sc., • ,~-- ,! - :w IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM CIVIL  
APPLICATION NO. 130 OF 2006 MWANANCHI ENGINEERING CONTRACTING  
CORPORATION ..... APPLICANT VERSUS

1. MANNA INVESTMENTS {PTY) LIMITED ..... 1 ST RESPONDENT
2. HOLTAN INVESTMENTS COMPANY LIMITED ... ~ 2No RESPONDENT {Application for extension of time from the decision of the Court of Appeal of Tanzania at Dar es Salaam) {Munuo, J.A.) dated the 16th day of August, 2006 in Civil Application No. 5 of 2006

## RULING

23 November & 13 December 2006 LUBUVA, J.A.: By notice of motion, the Court is moved for an order: That this honourable Court be pleased to extend the time within which to make a reference to three judges of the Court of Appeal against the decision of the Single Judge of the Court. 2 The application is supported by an affidavit sworn by Mr. Lameck ' Mfalila, learned counsel for the' applicant, and Nassar Awadhi Bafadhil, Director of the applicant Corporation. The matter arises from High Court, Commercial Case No. 34 of

2002. After delivery of the judgment in this case by the High Court ! (Kimaro, J. as she \_then was) on ,24th November, 2004, apparently, I the applicant was dissatisfied. C~msequently, notice of appeal was lodged but the respondents were not served within the prescribed time under the Court Rules, 1979 (Rules). In Civil Application No. 5 1 of 2002, the applicant moved a Single Judg~ vi tt11s Court for extension of time in which to serve the respondents vwith the notice ' of appeal. I Dealing with the application, the learned Single Judge (Munuo, J.A.) held that no sufficient reason had been shown for the inordinate ' delay in serving the notice qf appeal. The application was dismissed. Aggrieved by the decision of the Single Judge, the 3 applicant sought to make reference to the Court in terms of the provisions of rule 57 (1) of the Rules. However, for reasons which will be apparent in this ruling, the applicant was late in preferring the reference within seven days (7) as provided for under rule 57 (1). Hence this application has been filed. Mr. Lamed< Mfalila, learned counsel from HAKI LAW CHAMBERS, who had also represented the applicant before the Single Judge, appeared for the applicant in this application. On the other hand, Professor Mwaikusa, learned counsel, appeared for the respondent. Arguing in support of the

application, Mr. Mfalila, learned counsel, from the outset stated that the decision of the Single Judge as far as the law standards at the moment is correct. Then in elaboration of what is stated in the affidavit in support of the application he set out the reasons for the delay in preferring the reference. He also indicated what he intends to argue before the full Court if the application for extension of time is granted. On ' , 4 reference, he said he would urge the Court to give a wider interpretation to what constitutes sufficient or good reason in considering extension of time. Addressing the pertinent issue on the delay in applying for the reference, Mr. Mfalila, stated that soon after delivery of the decision of the learned Single Judge, within two days he met with his client, the applicant, Mwananchi Engineering Contractors Corporation Officials. That although there was no dispute that the position of the law taken by the Single Judge in the application was correct, a general agreement had been reached that the matter be taken on reference to the full Court. Unfortunately, according to Mr. Mfalila, the Managing Director was out of the country and so, he, the Managing Director, could not be consulted until his return to the country when the move to take up the matter on reference was approved. This accounted for the delay in applying for the reference, Mr. Mfalila emphasized. ' . ' 5 Furthermore, Mr. Mfalila's personal family problems which occurred thereafter, also added to the delay. He was bereaved and had to be away in Tabora for quite sometime sorting out family I affairs. All these reasons which accounted for the delay constitute good reasons to justify the extension of time, Mr. Mfalila stated. If the extension of time sought is granted, Mr. Mfalila further ' I indicated, he would urge the full Court to give a wider interpretation I of what constitutes sufficient or good reason in considering extension of time. While conceding that he had no difficulty with the current position of the law taken by the Single Judge in considering extension of time, he took the view that the, Court of Appeal has now come a ; long way, it should go beyond the ,horizon in considering applications I for extension of time. A wider interpretation of what constitutes I ' sufficient reason should be given., This, given the opportunity, he I would elaborate before the full Court. Professor Mwaikusa, learned counsel for the respondent, strongly opposed the application. 1 First, he said it is to be observed I I

- I I I 6 j I that this is yet another incident of delay on the part of the applicant. i . The application before the Single Judge Munuo, J.A. involved delay in I serving notice of appeal on the respondent. In this application again ! the issue pertains to delay on the !part the applicant in applying to I the Court for a reference after the 'decision of the Single Judge on I I 16th August, 2006. This, professor Mwaikusa pointed out, was I nothing other than a manifestationI of laxity on the part of the I applicant. I The reason given in the affidavit in support of the application I and the submissions by Mr. Mfalila, ilearned counsel for the applicant, l is no sufficient reason for extending the time, Professor Mwaikusa I further observed. Counsel maintained that the absence of the ! l Managing Director of the applicant Corporation from the country does not constitute sufficient reason because the process of applying for I l the reference could be put in place notwithstanding the absence of I ' j the Managing Director. j I . j . , ' 7 Regarding the family problems which confronted Mr. Mfalila,

learned counsel for the applicant, Professor Mwaikusa, submitted that without belittling the family problems that befell counsel for the applicant, which, undeniably were unexpected, still arrangement should have been made for the application to be made within the prescribed time. Professor Mwaikusa also conceded that sometimes, circumstances may constitute good reason for extension of time. However, in this case, he maintained that no such circumstances had been disclosed. As no good reason had been shown in this case for the delay, Professor Mwaikusa prayed for the dismissal of the application. It is common knowledge that generally the criteria which is taken into account in considering extension of time limited by the rules or by any decision of the court or the High Court for the doing of any act authorized or required by the rules is whether sufficient reason has been shown. In this case it is to be observed at once that though coincidentally both in the application before the learned Single Judge in Civil Application No. 5 of 2006 and in this application ... , the issue was the same, namely delay on the part of the applicant; the decision in this application shall be based only on the circumstances of the case before me and not any other. In this light, the issue for determination which, apparently, learned counsel for both parties are at one with each other is whether sufficient reason has been shown for the delay in applying for reference within the time prescribed under rule 57 (1) of the Rules. In this regard, as already shown, Mr. Mfalila, learned counsel for the applicant, had advanced two reasons. First, that the Managing Director of the applicant corporation whose name was not disclosed was outside the country and second, Mr. Mfalila was bereaved shortly after delivery of the ruling in Civil Application No. 5 of 2006 by the learned Single Judge. I intend to deal first with the first ground advanced. Could the fact that the Managing Director of the applicant Corporation was away outside the country constitute sufficient reason to warrant extension of time. Mr. Mfalila, learned counsel for the applicant, ardently maintained that that was sufficient reason. This is so, Mr. Mfalila maintained because of the financial implication involved in preferring a reference to the full Court: of this Court I agree that a reference to this Court invariably has financial implication to the parties involved. However, it is my view that the mechanism for dealing with the financial issues such as this is an internal arrangement for the party concerned, the applicant in this case. In that situation, it was open for the administrative machinery of the applicant corporation to have an alternative arrangement to take decision on what steps to be taken when it transpired that a reference had to be preferred. Without such alternative machinery, I venture to think that the possibility of the activities of the applicant Corporation being brought to a halt if the Managing Director is away cannot be ruled out. This, I do not think is ordinarily tenable, in the day to day operations of the applicant Corporation or any other institution. Likewise, for matters pertaining to court proceedings involving the applicant Corporation the process should not be brought to a halt on account of the Managing Director being away from the country. For this reason, I am increasingly inclined to accept Professor Mwaikusa's submission that the absence of the Managing Director from the country does not constitute sufficient reason to warrant the extension of time in which to make the reference to the full Court. I find no merit in this ground, I reject it. Next, I shall deal with the ground that Mr. Mfalila, learned counsel for the

applicant, unexpectedly got entangled in family problems in Tabora. One of his family members died, and so, he had to be in Tabora for quite sometime settling consequential family problems after the death. On this, Professor Mwaikusa conceded that such family problem was unexpected, and that sometimes circumstances such as this can constitute sufficient reason. With respect, I agree with Professor Mwaikusa's observation that matters involving death are unexpected, there is no prior notice to alert the parties involved. As happened in this case, shortly after the ruling in Civil Application No. 5 of 2006 was delivered on 11 16.8.2006 Mr. Mfalila found himself in such a predicament. He went to Tabora where he stayed until his return to Dar-es-Salaam when time had run out for preferring the reference. Without any further delay, counsel set about processing this application. Against this background and circumstances leading to the delay in preferring the reference, the question to be considered is whether such circumstances constitute sufficient reason for the delay. For my part, I am inclined to accept Mr. Mfalila's contention that the answer is in the affirmative. That the predicament which befell Mr. Mfalila at the time and his absence from Dar-es-Salaam consequently was unexpected. This aspect, as said before was also appreciated by Professor Mwaikusa, learned counsel for the respondent. In the circumstances, I am satisfied that sufficient reason had been shown to explain the delay in preferring the reference. With regard to what Mr. MfaHla intends to urge the full Court on reference regarding what constitutes sufficient reason in extending ; > 12 time, with respect, this is not relevant at this stage .. So, I say no more. All in all, for the foregoing reasons, the application is granted. The time is extended such that the applicant is to file the reference within seven days (7) from the date of the delivery of this ruling. DATED at DAR ES SALAAM this 11th day of December, 2006. D.Z. LUBUVA JUSTICE OF APPEAL I certify that this is a true copy of the original.

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