

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

CIVIL APPLICATION NO. 316/08 OF 2019

IDRISA R. HAYESHI APPLICANT

VERSUS

EMMANUEL ELINAMI MAKUNDI RESPONDENT

**(Application for Extension of Time to serve the respondent with
memorandum of appeal and the record of appeal out of time.
From the Judgment of the High Court of Tanzania,
at Mwanza)**

(Sumari, J.)

**Dated the 14th day of February, 2014
in
Land Case No. 23 of 2009**

.....

RULING

25th & 28th November, 2019

LEVIRA, J.A.:

The applicant, Idrisa R. Hayeshi lodged the memorandum of appeal and the record of appeal on the 22nd March, 2019. However, he was not able to serve the respondent with the said copies within seven days as per the requirement of Rule 97(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) due to the fact that, the Registrar did not endorse them until 3rd April, 2019; by then the applicant was already out of time. Therefore, the applicant has preferred this application under Rule 10 of the Rules.

At the hearing of this application, the applicant was represented by Mr. Salum Amani Magongo, learned advocate whereas, the respondent enjoyed the services of Mr. Silwani Galati Mwantembe.

Mr. Mwantembe informed me at the outset that the respondent has no objection to this application and that is why he did not file an affidavit in reply.

On his part, Mr. Magongo submitted that the applicant preferred this application under Rule 10 of the Rules because the said Rule allows extension of time before or after the act. In the matter at hand, he said, in order to ensure expeditious disposal of cases and in line with the overriding objective as provided under Section 3A and 3B of the Appellate Jurisdiction Act, Cap 141 in which advocates are required to play an active role, the record of appeal and the memorandum of appeal were served on the respondent on the 5th April, 2019. Mr. Magongo argued that service to the respondent before obtaining extension of time is in line with the provision of Rule 10 of the Rules. To support his position he cited the case of **Shanti v. Hindocha** (1973) E.A 207 where it was stated that:

"... We think that when the time for lodging a document is extended, the document is duly lodged if lodged within the

time as so extended, whether the actual lodging is before or after the order of extension. To hold otherwise would serve no purpose and would merely result in further costs being incurred."

According to Mr. Magongo, the applicant has decided to file this application to rationalize the process and avoid preliminary objection during hearing of the appeal. He thus prayed for this application to be granted.

Having considered the submission by the counsel for the applicant, I find it important to reproduce the provisions of Rule 10 of the Rules under which this application is brought hereunder:

*"The Court may, **upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal**, 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."*[Emphasis added].

The above quoted provision is very clear that extension of time can be applied whether before or after the expiration of the time set and whether before or after the doing of the act intended. Having perused the record, I am satisfied that indeed, the memorandum of appeal and the record of appeal were lodged in Court on 22nd March, 2019 as stated in the supporting affidavit by the applicant's counsel along with the annexed exchequer receipts, 'A' and 'B'. As stated earlier by the applicant's counsel, the said documents were supplied to the respondent.

Since the respondent does not dispute the fact that he was served with the copies of memorandum of appeal and the record of appeal on 5th April, 2019; and taking into consideration that Rule 10 of the Rules allows extension of time '*after the doing of the act,*' I do not have any justifiable reason not to grant this application. It is therefore my finding that, the reason for the delay advanced by the applicant on the Registrar's delayed endorsement of the documents in question amounts to 'good cause' in terms of Rule 10 of the Rules.

In exercise of my discretionary powers, I hereby extend time to the applicant from 22nd March, 2019 when he lodged to the Court his

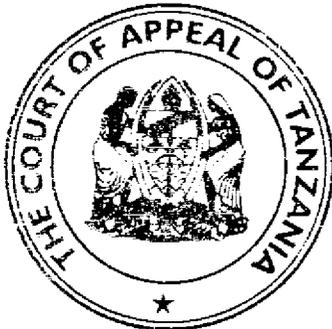
memorandum of appeal and the record of appeal to the time when he served the respondent with the same.

Having considered circumstances of this application, I do not make an order for costs.

DATED at **MWANZA** this 27th day of November, 2019.

M.C. LEVIRA
JUSTICE OF APPEAL

This Ruling delivered on this 28th day of November, 2019 in the presence of Mr. Emmanuel John, counsel for the applicant and Ms. Pendo Gimeno, counsel for the respondent, is hereby certified as a true copy of the original.




S. J. Kainda
DEPUTY REGISTRAR
COURT OF APPEAL