

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 124 OF 2009

WAMBELE MTUMWA SHAHAME APPLICANT

VERSUS

MOHAMED HAMIS JUMA
(LEGAL REPRESENTATIVE OF ASHA JUMA, DECEASED) RESPONDENT

(An application for extension of time to lodge an application
for review of the judgment of this Court)

(Munuo; Msoffe; Kileo, JJA.)

Dated 28th day of February, 2002
in
Civil Appeal Case No. 44 of 2002

.....

RULING

14th & 22nd November, 2011

BWANA, J.A.:

Mohamed Hamis Juma was appointed a legal representative of the late Asha Juma following directions by this Court as per its Order dated 26

November 2010. Henceforth, the record of this matter should reflect these changes.

When the matter came up for hearing, Mr. Israel Hitler Magesa, learned counsel for the respondent, raised a point in "*limine litis*" couched in the following words:-

"..... that this application is not properly before this Court on the ground that the applicant has failed to comply with Rule 106 (1) of the Court of Appeal Rules, 2009. And, for that reason, it will be prayed that the application be dismissed with costs....."

It was Mr. Magesa's further submission that failure to comply with those provisions (of R. 106 (1) of the Court of Appeal Rules, 2009) or failure to apply for extension of time under Rule 106 (9) lead to the dismissal of the application.

In reply thereto, Mrs. Crezenscia Rwechungura, learned counsel for the applicant, submitted that the present application was lodged under R.8 and 9(2) of the Court of Appeal Rules, 1979. It was filed on 15th October 2009, well before the 2009 Rules came into force. The latter were gazetted on 29th January 2010 (GN 36) and came into force on 1st February 2010. According to Mrs. Rwechungura, the requirements of R 106(1) of the 2009 Rules are therefore not binding. As such, the "*limine in litis*" has no merit.

It is mandatory, under Rule 106(1), that a party to a civil appeal or application before the Court shall have to file written submissions within sixty (60) days after lodging the record of appeal or filing the notice of motion. If the prescribed period elapses before a party complies with that requirement, the said party should seek and obtain leave of the Court before proceeding with the application.

The foregoing procedure was not complied with by the applicant herein. The only reason advanced by his counsel is that the application was lodged well before the mandatory provisions of Rule 106(1) came into effect. It is a sound argument but not conclusive, in my view. To the best

of my knowledge, many laws do contain transitional, saving provisions to cater for situations such as the present one, "*ab antecedente*". Rule 130 of the Rules is a typical provision. It provides thus:-

" In all proceedings pending whether in the Court or High Court, preparatory or incidental to, or consequential upon any proceeding in court ***at the time of coming into force of these rules, the provisions of these rules shall thereafter apply*** but without prejudice to the validity of anything previously done;

Provided that:

(a) if and so far as it is impracticable in any such proceedings to apply the provisions of these rules, the practice and procedure heretofore obtaining shall be followed; or

(b).....

(emphasis provided)

In my considered view the guidelines provided by Rule 130 (a) are as follows.

First, that proceedings, which started prior to coming into force of the new (2009) Rules are valid.

Second, the conduct of the said proceedings shall have now to comply with the requirements provided for in the new Rules. In the instant matter, filed prior to the 2009 Rules coming into force, there was no statutory requirement to file written submissions. Following the coming into force of the 2009 Rules, it is now mandatory under Rule 106(1), that written submission be filed. It is particularly important to note here that the new Rules became operational before the present application was heard. Therefore, it is my further view that the requirements of Rule 106(1) are binding to the parties herein.

Third, this Court may dispense with the mandatory requirements under R 106 (1) if, in the Court's view, compliance with such requirements may

have to or result into impracticable situation, as Rule 130 (a) provides. That is not the situation herein.

" *A causa de cy'* I am of the view that the present application should be brought into conformity with the requirements of the 2009 Rules by ordering the applicant to comply with the provisions of Rule 106 (1) of the Rules. Such an order is "*indemnitas*".

Accordingly, the applicant is ordered to comply with the provisions of Rule 106 (1) of the 2009 Rules by filing his written submissions within sixty (60) days from the date this Ruling is delivered. No order as to costs.

DATED at DAR ES SALAAM this 17th day of November, 2011.

S. J. BWANA
JUSTICE OF APPEAL

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

J.S. MGETTA.
DEPUTY REGISTRAR
COURT OF APPEAL