

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO.73 OF 2015

ATTORNEY GENERAL.....APPLICANT

VERSUS

1. THE BOARD OF TRUSTEES OF THE CASHEWNUT INDUSTRY }
DEVELOPMENT TRUST FUND }
2. HAMMERS INCORPORATION CO.LTD } RESPONDENTS

(Application for extension of time to file an application
for revision against the decree of the High Court of
Tanzania Commercial Division)

(Nyangarika, J.)

dated 31st day of July 2014

in

Commercial Case No. 108 of 2013

RULING

2nd & 27th November, 2015

KIMARO, J.A.:-

The Attorney General has filed a notice of motion under rule 10 of the Court of Appeal Rules, 2009 seeking for extension of time to apply for a revision against the judgment of the High Court of Tanzania, Commercial Division (Nyangarika, J.). The application is supported by an affidavit sworn by Gabriel Paschal Malata. In compliance with rule 106 (1) of the Court of Appeal Rules, 2009, the applicant also filed written submissions to

support the application which Mr. Malata adopted, together with his affidavit.

When the application came for hearing, Mr. Gabriel Malata Principal learned State Attorney appeared for the applicant, assisted by Mr. Silvester Mwakitalu and Paul Shaidi, both learned Senior State Attorneys. Mr. Nduruma Majembe learned advocate appeared for the 2nd respondent. The Court was informed that Mr. Kibatala, learned advocate was supposed to appear to represent the 1st respondent. Unfortunately at the time the Court started business he had not arrived and the Court had to proceed hearing the application in his absence. As he had not even filed any affidavit in reply to oppose the application the Court drew an inference that he was not contesting the application.

Mr. Majembe informed the Court that an affidavit in reply to oppose the application was affirmed by Mr. Haroun Rashid Maarifa. He too, filed written submissions in opposing the application under Rule 106 (8) of the Rules to support his position in opposing the application. He adopted both the affidavit in reply and his submissions to support his position.

The grounds for filing the application are many but my considered opinion is that they include those relevant to the application for revision itself but not to this application seeking for extension of time to file a revision. What appears to be relevant to the application at hand are grounds j and l. In the two grounds the applicant says that the government was not made a party to Civil Case No. 108 of 2013 from which the application arises and adverse orders were made against it without being afforded an opportunity for hearing. The deponent of the affidavit says Civil Case No. 108 of 2013 involved Hammers Incorporation Company Limited and The Board of Trustees of the Cashewnut Development Trust Fund who were the plaintiff and the defendant respectively. The Office of the Attorney General became aware of the existence of the case when they received a letter from the Permanent Secretary Ministry of Agriculture, Food Security and Cooperatives bearing reference No. CAC.19/86/01/VI dated 30th March 2015 informing them that a colossal amount of money in the account of the second respondent had been attached in execution of a decree issued in respect of the civil case.

The affidavit of Gabriel Malata explains in detail the relationship between the Government and the second respondent. In a summary form,

what is gathered from the affidavit of Gabriel Malata is that through funds supplied by the government, the first respondent entered into a contract with the second respondent for supply of sulphur dust. A misunderstanding occurred between the parties on the quality of the supply, place and time of delivery and style of parking. This resulted into the first respondent filing Civil Case No. 108 of 2013. The first respondent was granted judgment. Consequently the account of the second respondent at CRDB Bank PLC amounting to T. shillings 953, 142, 797.05 was attached and the said amount remitted to the Registrar Commercial Division of the High Court. It is contended that the said money belongs to the Government. The Government was not aware of the existence of the case until when execution was processed resulting in the attachment of the account of the second respondent. The affidavit further avers that since the government has an interest in the matter, it is asking that it be afforded an opportunity to be heard. The applicant became aware of the case on 2nd April, 2015 while the judgment was delivered on 21st July 2014, that was after nine months. Mr. Malata said the delay was not an intended one and that is why he is seeking for extension of time to file an application for a revision of the judgment of the High Court. He said the

judgment is tilted with a lot of illegalities. He prayed that the application be granted. The Court was referred to among others the cases of **Abdallah Salanga & 63 others V Tanzania Harbours Authority** Civil Application No. 4 of 2011 (unreported), **Wankira Benteel V Kaiku Foya** Civil Reference No.4 of 2000 and **Principal Secretary, Ministry of Defence and National Service V Devram Valambia** [1992] T.L.R. 182 to support the application.

The affidavit in reply by Mr. Haroun Rashid Maarifa agrees that there was a contract for supply of sulphur dust entered into between the first respondent and the second respondent. The credit facility was facilitated by the Tanzania Investment Bank. He said the First respondent fulfilled its obligation under the contract but a misunderstanding occurred because the second respondent did not pay the full amount of the contract. That is what led the first respondent to file the case against the second respondent. The cases of **Daudi Haga V Jenitha Abdom Machafu** Civil Reference No. 1 of 2000 and **Regional Manager Tanroads Kagera V Ruaha Concrete Company Limited** Civil Application No.96 of 2007 both (unreported) in support of the submission in opposing the application. Mr. Majembe prayed that the application be dismissed with costs.

The application is one which seeks for extension of time to file an application for revision to challenge the legality of the judgment the of the High Court. The application is filed under Rule 10 of the Court of Appeal Rules, 2009. All that the applicant is required to do is to show sufficient cause why he was not able to file the application in time. Having gone through the notice of motion, the supporting affidavit and the affidavit in reply, the submissions by both parties and their authorities cited, my considered opinion is that the applicant has shown sufficient cause for the delay in filing the application. The affidavit in support of the application shows that the applicant became aware of the existence of the case after the period for filing a revision had elapsed. The learned Principal State Attorney pointed out correctly that an application for revision has to be filed sixty days from the date of the judgment. This is what Rule 65 (4) of the Court of Appeal Rules says. If the applicant became aware of the decision he wanted the court to intervene through a revision after the expiry of the sixty days, definitely the applicant had to request for extension of time for filing the application. The learned Principal State Attorney said he attached the authorities I have referred to. Unfortunately they are not in this case file. But there is the case of **R V Yona Kaponda**

and 9 Others [1985] T.L.R. 84 which is of assistance to the application although it relates to a criminal matter. The issue which was involved was extension of time. In that case the Court held that:-

"In deciding whether or not to allow an application to appeal out of time, the court has to consider whether or not there is "sufficient reasons" not only for the delay but also "sufficient reasons" for extending the time during which to entertain the appeal"

The Court in the case of **Daudi Haga** (supra) cited by the learned advocate for the respondent said *"But in order for extension to be granted reasons accounting for the delay have to be advanced."*


In this case as I have already said, the applicant has accounted for the delay. The government was not aware of the existence of the suit which led to the attachment of the money which the applicant claims to have supplied to the second respondent. The Court has always insisted that the right to be heard is fundamental. See the Constitution of the United Republic of Tanzania, 1977 article 13 (6) (a). The applicant has

also said that the judgment it wants to challenge has some illegalities. Illegality has also been accepted as a reason for allowing an application for extension of time. The case of **Valambia** (supra) is of relevance on this point. The first respondent accepted that there was a credit facility extended to it for supply of sulphur to the second respondent. Interest of justice requires that the parties be heard so that the truth can be ascertained. The observation having been made, I allow extension of time to the applicant for filing the application for revision. The same should be filed within a month from the date of the delivery of this ruling.

DATED at DAR ES SALAAM this 24th day of November, 2015.

N.P.KIMARO
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL