**DN Bahram and Company Limited and others v Tanzania Postal Bank and**

**others**

**Division:** Court of Appeal of Tanzania at Dar-es-Salaam

**Date of judgment:** 8 September 2005

**Case Number:** 113/05

**Before:** Munuo JA

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Civil procedure – Extension of time – Grounds for application for extension of time to serve*

*respondents with a Notice of Appeal and stay of execution.*

**Editor’s Summary**

The three applicants through their advocate brought this application under rule 9(2)(*b*) of the Court of Appeal Rules, 1979 seeking extension of time to serve the respondents with a Notice of Appeal and stay of execution. The advocate stated that the application for leave to appeal was dismissed for want of prosecution because he had travelled to Mombasa and his counsel was sick on the hearing date. The learned Advocate, on his part at paragraph 5 of his affidavit said that he left the Notice of Appeal and the letter applying for copies of judgment, decree and proceedings at the Registry so that the Registrar would sign the same and cause the material documents to be served on the respondents. The first respondent bank however stated that the applicants were employing tactics to frustrate the process of law and that neither the alleged sickness of the applicant’s counsel nor the default to prosecute the application was communicated to the High Court so the material application had to be dismissed for want of prosecution on the 16 April, 2005. They also contended that the Notice of Appeal was not served on them due to lack of diligence on the part of the applicants and their counsel and thus, the present application should be rejected for want of merit.

**Held** – The supporting affidavits lack merit because if the applicant’s counsel was ill and if one of the applicants had travelled to Mombasa, communication would have been made to the trial court on the scheduled hearing. Had that been done, the application for leave to appeal would not have been dismissed for want of prosecution. The applicant’s delay in serving the respondent did not constitute sufficient ground for extending the sought period of serving the Notice of Appeal on the respondent. (*Inspector Sadiki and others v Gerald Nkya* [1997] TLR 290; *Francis Itengeja v Kampuni ya Kusindika Mbegu za Mafuta Limited* [1997] TLR 149; *Transport Equipment Limited v DP Valambhia* [1993] TLR 91 applied. The application was lacking in merit. Failure to serve the Notice of Appeal on the respondents rendered the intended appeal incompetent so the application for stay of execution was not sustainable in law. Application dismissed.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Francis Itengeja v Kampuni ya Kusindika Mbegu za Mafuta Limited* [1997] TLR 149 – **AP**

*Inspector Sadiki and others v Gerald Nkya* [1997] TLR 290 – **AP**

*Transport Equipment Limited v DP Valambhia* [1993] TLR 91 – **AP**