**Mwesiga v Nuti**

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

**Date of ruling:** 15 December 2003

**Case Number:** 63/01

**Before:** Munuo JA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Court of Appeal – Time – Extension of time – Incompetent application – Whether court had*

*discretion to extend time to a lay party to lodge a compliant application – Rules 3(2)(b), 10 and 43(b)*

*Court of Appeal Rules (Tanzania).*

**Editor’s Summary**

The applicant instituted an application in the High Court seeking extension of time within which to lodge an appeal against Probate and Administration Cause Number 20 of 1994. The application was denied and the applicant instituted a similar application in the Court of Appeal. The appellant had not been represented by counsel when instituting the application and did not comply with the requirements of rule 10 of the Court of Appeal Rules. The respondent raised a preliminary objection to the application on grounds that (*a*) the application was hopelessly time barred and offended rule 43 of the Court Rules and (*b*) the application was incompetent for failure to comply with rule 10 of the Court Rules. The respondent contended that the High Court had rejected the applicant’s application because it was time barred.

**Held** – The application was not time barred for it was filed within the statutory period. However, the application was in contravention of rule 10 of the Court of Appeal Rules and the second preliminary objection would be upheld and the applications truck out. But under rule 3(2)(*b*) of the Court of Appeal Rules, the Court had a discretion to make an order for the purpose of better meeting the ends of justice and make directions on its own motion of the procedure to be adopted or make any other necessary order. In the present case the Court would extend time to enable the applicant time to institute an application which complies with the law. *Litiame v Naftali* civil appeal number 62 of 1999 followed.

**Case 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)

*Loitiame v Naftali* civil appeal number 62 of 1999 – **F**