**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).*

**RULING**

**MUNUO JA:** The learned advocate for the respondent, Mr *Nyangarika* filed a notice of preliminary objection dated the 19 June 2002 on the ground that: (*a*) The application is hopelessly time barred and thus offends rule 43(*b*) of the Tanzania Court of Appeal Rules, 1979. (*b*) The application is incompetent for the same reason that it has been filed under wrong provisions of the law and indeed offends rule 10 of the Tanzania Court of Appeal Rules, 1979. Asserting the facts deponed to the counter-affidavit of the respondent, counsel for the applicant observes that probate and administration cause number 20 of 1994 was determined on the 27 May 1999 as evidenced by annexure A to the counter-affidavit. Thereafter the applicant unsuccessfully lodged a similar application, that is, miscellaneous civil application number 128 of 2000 in the High Court of Tanzania at Dar-es-Salaam before Bubeshi J. Hence the present application for extension of time to appeal against the decision in probate and administration cause number 20 of 1994. However, as the advocate of the respondent pointed out, the notice of motion was wrongly brought under rule 46(3), it ought to have been instituted under rule 43(*b*) of the Court Rules which provides. “43(*b*) Where an appeal lies within the leave of the Court, application for leave shall be made in the manner prescribed in rules 46 and 47 within fourteen days of the decision against which it is desired to appeal or, where application for leave to appeal has been made to the High Court and refused, within fourteen days of that refusal.” The advocate of the respondent contended that the present application is time barred because the High court rejected miscellaneous civil application number 128 of 2000 because it was time barred. He did not demonstrate in terms of dates how and why the present application is time barred. The ruling in Miscellaneous civil application number 128 of 2000 is not among the documents filed by the applicant. On the 5 February 2002 the Court ordered the applicant to file the said ruling but she instead filed the judgment in probate and administration cause number 20 of 1994 which though relevant, is not the subject of this application. Ms *Mnguto*, learned advocate for the applicant, contended that the present application is within time for Bubeshi J rejected miscellaneous civil application number 128 of 2000 on the 17 May 2001 and thirteen days later, that is, on the 30 May 2001, the applicant brought this application within the 14 days period of limitation. It is my considered view that the application is not time barred for it was filed within the statutory period of limitation of 14 days as provided for under rule 43(*b*) of the Court of Appeal Rules of 1979. For that reason the first preliminary objection raised by Mr *Nyangarika* is not tenable. I accordingly overrule the preliminary objection pertaining to the application being time barred. Mr *Nyangarika*’s contention on the application being brought on wrong provisions of the law and the applicant not complying with rule 10 of the Court rules has merit. Realizing her problem of legal literacy, the applicant applied for legal aid on the 10 December 2001 saying that she has no means to engage an advocate. At the hearing she was represented by counsel but by that time it was too late in the day to rectify the record of this application. Rule 10 of the Court of Appeal rules provides: “10 (1) Except where the nature of the document renders it impracticable, every document prepared for use in the Court shall be on foolscap paper of durable quality: only one side of the paper shall be used and a margin of not less than one and a half inches shall be left on the side of the sheet to permit binding in a book form. ( 2) A ll documents prepared for use in the Court shall be clear and easily legible and may be printed, mimeographed, typewritten, written or reproduced in photostat, photography, type lithography, stencil duplicating, xerography or in any combination of those media. ( 3) I n every criminal appeal … ( 4) T he pages of every application and, in criminal cases, of the record of appeal, and in civil cases, of the memorandum of appeal and the record of appeal shall be numbered consecutively. ( 5) I n all applications and appeals, every tenth line of each record shall be indicated in the margin on the right side of the sheet. ( 6) W hatever medium is adopted for the production and reproduction of documents for use in the Court, the taxing officer shall on taxation allow only those costs which would in his opinion have been incurred by using the most economical method permitted or available.” As stated earlier on, the applicant did not comply with rule 10 of the Court Rules. Although she was represented in the High Court, she sought legal aid in this application because she could not afford the services of an advocate. In the case of *Loitiame v Naftali* civil appeal number 62 of 1999, Court of Appeal of Tanzania at Arusha (UR) the Court extended time to enable an unrepresented appellant to properly institute his appeal. Here the applicant filed the record of the application without the assistance of counsel so like in the case of *Loitiame*, this Court is bound to exercise its power under rule 3(2)(*b*) of the Court of Appeal Rules, 1979 to rectify the situation. Rule

3(2)(*b*) provides:

“3(2) Where it is necessary to make an order for the purpose of:

( *a*) …

( *b*) b etter meeting the ends of justice; or

( *c*) … the Court may, on application or *on its own motion*, give directions as to the procedure to be adopted or make any other order which it considers necessary.” In the light of the above the second preliminary objection is upheld. The application is struck out. But under rule 3(2)(*b*) of the Court of Appeal Rules, time is extended from today to 20 January 2004 to enable the applicant to institute an application and comply with the Court order of the 5 February 2002 by filing the ruling, the subject of this application. Costs to abide the result of the intended appeal.

For the applicant:

*Ms Mnguto*

For the respondent:

*Mr Nyangarika*