

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CIVIL APPLICATION NO. 33 OF 2015

**ALLIANCE INSURANCE
CORPORATION LIMITED APPLICANT**

VERSUS

**ARUSHA ART LIMITED RESPONDENT
(Appeal from the decision of the High Court of Tanzania
at Arusha)**

(Mwaimu, J.)

Dated the 5th day of June, 2015

in

H/C. Civil Case No. 27 of 2012

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RULING

20th May & 26th 2016

MZIRAY, J.A.:

By notice of motion made under Rule 10 of the Court of Appeal Rules, 2009 the Court is moved for an order that the applicant Alliance Insurance Corporation Ltd be granted enlargement of time to file a notice of motion for stay of execution of the decree in Civil Case No. 27 of 2012 of the High Court of Tanzania, Arusha District Registry. The application is supported by an affidavit sworn by one Erick Kamata Mushi, the Principal Officer of the applicant company.

When the matter was called on for hearing, the respondent or his counsel did not turn up in Court despite the fact that both were duly served with notice to appear. In the circumstance the matter proceeded ex parte in terms of Rule 63(2) of the Tanzania Court of Appeal Rules, 2009.

Principally, Dr. Alex Nguluma, learned counsel for the applicant submitted and argued that the applicant's delay in filing the application for stay of execution was caused by sufficient reasons. Among the reasons was the delay in receiving copies of proceedings, judgment and decree which were essential documents in filing the application for stay of execution. He submitted that the applicant applied for copies of judgment and decree on 10/6/2015 soon after the judgment was delivered on 5/6/2015 but copies of the same were made available to him on 4/9/2015, over 60 days, the time allowed within which to file an application for stay of execution.

Rule 10 of the Court of Appeal Rules provides for extension of time for the doing of any act authorised or required by these Rules

if there are sufficient reasons. In **Benedict Mumello v. Bank of Tanzania**, E.A.I.R [2006] Vol. I, the Court of Appeal held at page 227 as follows:-

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause"

Extension of time is a matter for discretion of the Court and that the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time. (See also **Shanti v. Hindocha & Others** [1973] EA. 207.

The question now is whether the applicant has shown good and sufficient cause to warrant the grant of the application. I have carefully considered the argument put forward by the learned counsel for the applicant and in the end I have reached the conclusion that there is merit in the application. It was submitted and likely so in my view that there is a time limit of sixty (60) days

prescribed in an application for stay of execution but the delay to receive typed copies of judgment and decree took the applicant over 90 days to receive these documents. The delay was not occasioned by the applicant hence the fault was not of his own. The reasons advanced by the learned counsel for the delay are sound in law and for that matter justify the grant of the application.

Accordingly, the application is granted as sought. The applicant is given 14 days from the date of this ruling to file the application for stay of execution. No order as to costs.

DATED at **ARUSHA** this 25th day of May, 2016.

R.E. S. MZIRAY
JUSTICE OF APPEAL

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

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL