

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 204 OF 2016

- 1. REV.DR.GETRUDE RWAKATARE1ST APPLICANT**
**2. THE REGISTERED TRUSTEES OF
MIKOCHENI ASSEMBLIES OF GOD.....2ND APPLICANT**

VERSUS

ZITHAY KABUGA.....RESPONDENT

**(Application from the decision of the High Court of Tanzania,
(Land Division) at Dar es Salaam)**

(Ndika, J.)

dated the 24th day of June 2016

in

Land Application No. 273 of 2015

RULING

28th November & 2nd December, 2016

MZIRAY, J.A.:

By notice of motion made under Rule 10, 47 and 48(1) of the Court of Appeal Rules, 2009 (the Rules), the Court is moved to grant extension of time to file a notice of appeal against exparte judgment and decree in Land case No 127 of 2008. The application is supported by the affidavit of one Emmanuel Augustino, learned counsel for the applicants.

When the application was called on for hearing, Mr. Barnabas Luguwa, learned counsel assisted by Mr. Emmanuel Augustino appeared for the applicants, while the respondent was represented by Mr. Daniel Ngudungi, learned counsel assisted by Ms. Delphine Kimbori learned advocate.

Upon being given chance to argue their application, Mr. Luguwa informed this court that he was instructed to handle the case at a late stage and that the matter was initially being handled by Mr. Emmanuel Augustino. He stated that upon perusing the record he had noted that written submission in terms of Rule 106 (1) of the Rules had not been filed and that time to file the same has already expired. He therefore prayed for adjournment so that he could lodge application to file written submission out of time else, in the alternative, the Court should invoke Rule 106 (19) of the Rules to dispense with the requirement of filing written submission and find that there were exceptional circumstances which can make this court not to exercise its revisionary power under Rule 106 (9) of the Rules leading to the dismissal of the appeal. Basically, he relied upon the illegalities which appeared in the judgment of the High Court in Land case No. 127 of 2008 which need to be resolved by the Court of Appeal.

In his reply submission, Mr. Ngudungi, learned counsel for the respondent pointed out that the argument by Mr. Luguwa has no merit at all because he was the one who prepared the notice of motion, therefore, he cannot in the circumstance say that the record was brought to him very late. However, the learned counsel submitted that the prayer for adjournment is unfounded as there is no valid reasons accounted for

failure to file written submission to warrant this Court to exercise its discretionary power to extend time within which the applicants to file their written submission out of time or dispense with the requirement to file written submission under Rule 106 (19) of the Rule.

I have considered the merits and the likely demerits of this application by examining the averments of both parties hereto. I have also taken into account the parties arguments both in support and against the application. However, looking at the notice of motion, I am in total agreement with Mr. Ngudungi that it is Mr. Luguwa learned counsel for the applicants who prepared it. That being the case, in my humble considered view, it sounds awkward for him to say the record was brought to him at the late stage. Worse still, despite the application being instituted way back in July, 2016, the applicants have defaulted in lodging their written submission. This violated the mandatory provision of Rule 106 (1) of the Rules which reads;

" A party to a civil appeal, application or other proceedings, shall within sixty (60) days after lodging the record of appeal or filing the notice of motion, file in the appropriate registry a written submission in support of or in opposition to the appeal or

the cross- appeal or application if any, as the case may be".

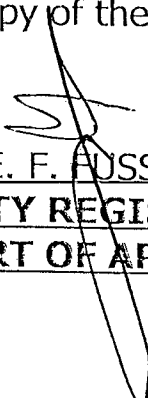
I am aware of Rule 106 (9) of the Rules. I am also aware of the decisions of this Court on the consequences of non- compliance with the requirements of Rule 106 (1) of the Rules. [See the decisions in **Mwinyishehe A. Mwinyishehe Vs. Secretary General Bilal Muslim Mission**, Civil Appeal No. 36 of 2010 and **Masunga Mbegete and two others v. The Hon. Attorney General and another**, Civil Application No. 68 of 2010 (Both unreported).

Since there is no convincing exceptional circumstances shown in the case at hand to warrant this Court to invoke the provision of Rule 106 (19) of the Rules, I am therefore, enjoined to make no other order but to dismiss the application under Rule 106 (9) of the Rules with costs.

DATED at DAR ES SALAAM this 30th day of November, 2016.

R.E.S. MZIRAY
JUSTICE OF APPEAL

I certify that is a true copy of the original


E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL