Abatement of applications, Rule 57(3)

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

ARS CIVIL APPLICATION NO. 11 OF 2001

IBRAHIM RAMADHANI .... APPLICANT

VERSUS

MELEMBUKI KITASHO ....RESPONDENT

(Application for extension of time within which to apply for revision
from the decision of the High Court of Tanzania
at Arusha)

(Msoffe, J.)

Dated 10th November, 2000
in
Misc. Civil Application No. 160 of 1999

_____

RULING

2nd & 18th November, 2011

LUANDA, J.A,:

This is an application for extension of time within which to apply for

revision of the decision of the High Court (Msoffe,J as he then was) dated

10th November, 2000 in Miscellaneous Civil Application No. 160 of 1999.

The application was filed on 23rd November, 2001. I am not in a position to

say what Msoffe, J had decided as no copy of the decision was attached.

applications, Rule 57(3)

That alone would have been enough to strike out the application as the Court is not in a position to know what exactly Msoffe, J had said.

Whatever the position, on 21st June 2005 when the application came for hearing, the Court (Mroso, J.A) was informed by Haruna Ibrahim that the applicant **IBRAHIM RAMADHANI** passed away on 17/6/2005. Mroso, J.A adjourned the matter to enable a legal representative to be appointed.

On 22/9/2006 when the matter came for hearing before Kimaro, J.A, one Sadi Ibrahim informed the Court that he is the legal representative of the deceased but no application was made in this court so that his name to be included as a party in these proceedings. The Court also ordered him to sort out the discrepancy in the death certificate in respect the name of the deceased. The death certificate should reflect the name of Ibrahim Ramadhani instead of Ibrahim Makunda.

On 18/4/2008 Kaji, J.A adjourned the matter because Sadi Ibrahim was reported sick.

On 22/5/2009 before Bwana, J.A Sadi Ibrahim did not comply with the Court order (Kimaro, J.A) dated 22/9/2006. Mr. Nelson Merinyo learned advocate complained bitterly about that failure to comply with the Court order. The matter was however adjourned to yet another date to be fixed. Bwana, J.A said:

ORDER

In view of the conflicting issue involved in this application and as per order of this Court (per Kimaro, J.A) dated 22/9/2006 extension of time (last chance) is granted to Sadi Ibrahim Mbaga to comply with what was ordered by the Court on 22/9/2006. The hearing of the application adjourned to next session to be fixed by the Registrar. No order as to costs.

Bwana, J.A.

Sgd

On 2/11/2011 the matter was called on for hearing. Sadi Ibrahim was yet to comply with the Court order. Mr. Merinyo ask the Court to strike out the application for failure to comply with the Court order.

Clarifying he said Sadi Ibrahim was required to make an application so that he be made a party in these proceedings as is provided for under Rule 57 (3) of the Court of Appeal Rules, 2000 (the Rules). To be appointed as an administrator of the deceased estate is not enough, he charged. He went further to say that the manner in which such application is made is spell out under Rule 48 (1) of the Rules. Furthermore, up to the date when the matters was called on for hearing, they were yet to be served with a Notice of Motion. And since Sadi Ibrahim, who appeared several times in these proceedings, is yet to comply with the Court orders, he should be barred from appearing in these proceedings because he has no *locus standi*. He prayed that the application be struck out as his client is suffering unnecessarily.

Responding, Sadi Ibrahim prayed for yet more time to file the application.

In rejoinder Mr. Merinyo submitted that the Court had given him more time than enough. He reiterated his prayer of striking it out.

From the foregoing, it is not in dispute that one Ibrahim Ramadhani, who appear in AR. CIVIL PPLICATION NO. 11 of 2001 as an applicant is no more. However, since this is a civil application, the death of Ibrahim Ramadhani does not terminate those proceedings. As correctly pointed out by Mr. Merinyo that a legal representative of the deceased is allowed to step into his shoes and be made a party upon application in this Court. And such application is made by way of a Notice of Motion supported by an affidavit or affidavits. This position of the law is provided for under the Rule 54 (2) of the Court Rules, 1979 [Now Rule 57 (3) of the Rules], Rule 57 (1) of the Court Rules, 1979 [Now Rule 48 (1) of the Court Rules] and Rule 46 (1) the Court of Appeal Rules, 1979 [Now Rule 49 (1) of the Rules]. The rules read:

*54 (2) A Civil Application shall not abate on the death of the applicant or the respondent but the Court **shall, on the application** of any interested person, course the legal representative of the deceased to be made a party in place of the deceased. (Underscore mine).*

And Rules 45 (1) and 46 (1) provide:

45 (1) Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, all applications to the court shall be by motion, which shall state the grounds of the application.

46 (1) Every formal application to the Court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.

It is Mr. Merinyo's contention that the legal representative one Sadi Ibrahim is yet to file such application despite Court orders to that effect, hence the prayer to strike out the application. Mr. Sadi Ibrahim prayed the matter further be adjourned to enable him file the application.
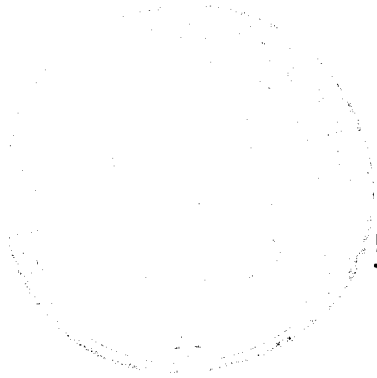
I have carefully considered the prayer of Mr. Merinyo. I think it has merit. It has merit because Sadi Ibrahim, though not a party, keep on asking for adjournment which adjournments were granted as narrated above without filling any application. That lax altitude to the Court orders should come to an end. To accede to the request of Sadi Ibrahim is to encourage that laxity. So, I refuse to grant further adjournment.

In terms of Rule 4 (2) (b) of the Court of Appeal Rules, 2009 I strike out the application. No order as to costs.

DATED at **ARUSHA** this 16th day of November, 2011

B. M. LUANDA
JUSTICE OF APPEAL

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

Z. A. Maruma
DEPUTY REGISTRAR