IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

MISC.COMM.APPLICATION NO. 75 OF 2021
(Originating from Commercial Case No.54 of 2008)

MEDITERENIAN SHIPPING COMPANY ..... APPLICANT

VERSUS

AFRITEX LIMITED ..... RESPONDENT

RULING OF THE COURT

K.T.R. MTEULE J.

24/08/2021 & 27/10/2021

This ruling concerns an application for extension of time to lodge Notice of Appeal to the Court of Appeal against the ruling and order of this court (Honorable Nyangarika J) dated 11th Day of July 2008.

I find it appropriate at this point, to give a brief sequence of facts leading to this application. On 28th September, 2004 the applicant and the respondent herein entered into a contract of carriage for shipment of 15,9558 tons of Cotton yarn and 10,895 tons of cotton waste to Leixoes, Portugal, Durban and South Africa VIA abroad container No. CLHU 8158308 and MSCU 9440898 respectively. Two containers were claimed by the Respondent to have been negligently shipped to a wrong destination by the Applicant. Consequently, the respondent filed in this Court, Commercial Case No. 54/2008 against the applicant, claiming for among others, compensation to the tune of USD 65,370.77. On 11th day of July 2013, the suit was decided in favor of the respondent who was awarded USD 51,945.17.

Being aggrieved by the above decision, the applicant lodged an appeal to the Court of Appeal. The said appeal was struck out on 31st May 2021 for having incomplete record where the transcribed record of this court was missing in the record of appeal. Still enthusiastic to pursue the appeal, the applicant filed this application for extension of time to lodge a notice of appeal out of time as a step towards filing of the appeal to the Court of Appeal.

Along with the Chamber summons, the applicant filed an affidavit sworn by one **Rahim Mbwambo** an advocate from M/S Law Associates Advocates in which after explaining the chronological facts leading to this application as already stated in the above. The applicant added that, following the striking out of the appeal on 31st May 2021, the applicant commenced preparation of this application from 2nd June 2021, finalized it on 3rd June 2021 and filed it on 4th June 2021 through online system. He stated that the applicant has never slept on her right ever since the case started and has been taking all necessary actions timely.

According to the affidavit, the Memorandum of Appeal demonstrates illegality in the judgment where the applicant alleged to have been condemned unheard and an assertion that the High Court, out of time, did entertained the case which rendered the impugned decision.

The Respondent challenged the application through her counter affidavit sworn by one **Hassan Gullam Abbass Dewji** who is the Principal officer of the Respondent**.** The deponent in the counter affidavit alleged **negligence** on the part of the respondent for having failed to handle the matter in the Court of Appeal. He deponed that, in the Court of Appeal, the counsel for the applicant sought and was allowed two times to rectify the certificate of delay where he filed supplementary record, and yet he failed

to correct the record by including the missing proceedings. He further stated that the applicant has **failed to account for ten days** which lapsed from the date the appeal was struck out to the date when this application was physically filed.

This application was argued by a way of Written Submissions. The applicant's submissions were prepared by **Mr. Ndanu Emmanuel Advocate** for the applicant while the Respondent's submissions were prepared by **Elisa Abel Msuya Advocate** for the Respondent. I am grateful for the useful work done by the two counsels.

Having adopted the contents of the affidavit as part of the submission and having explained the chronological facts leading to this application, Mr. Emmanuel submitted that it is a settled principle that the court will only exercise its discretion to extend time upon being shown **Good Cause for the Delay.** According to him, what amount to good cause cannot be laid by any hard and fast rule but depends on the fact in each case as held in **Vodacom Foundation v. Commissioner General (TRA) Civil Application No. 107/20 of 2017 (unreported).** He submitted that in this case the court stated that in deciding to extend time, consideration should be given in questions such as:

- Whether the application for extension of time has been brought promptly,
- Whether every day of delay has been explained
- Whether there was diligence on the party of the applicant.

According to Mr. Emmanuel there was a technical delay since the applicant has been diligent and timely in pursuing the appeal before the Court of Appeal, only that it was prevented by errors which were caused by the

Registrar who supplied incomplete records which led to the striking out of the appeal.

He accounted the days between striking out of the appeal in the Court of Appeal and the date of filing this application as the time he used to discuss with the officer of the applicant and agree on how to start afresh the process of appeal, preparation of this application and its filing.

To support his contention, Mr. Emmanuel for the applicant cited the case of **Fortunatus Masha Vs. William Shija and Another [1997] TLR 154,** where it was stated:

> *"Distinction has to be drawn between cases involving real or actual delays and those such as the present one which clearly only involve technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted".*

On the basis of the above cited cases Mr. Emmanuel submitted that the applicant has diligently prosecuted his case ever since and denied having been negligent or sloppy as the error which led to the striking out of the appeal was not caused by negligence.

The applicant cited further the case of **Mbogo vs. Shah [1968] E.A** quoting the following words;-

> *"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an*

arguable case on the appeal and the degree of the prejudice to the defendant if time is extended".

On illegality, Mr. Emmanuel mentioned the following issues that need to be looked at by the Court of Appeal.

(1) Whether the High Court ignored the applicant application for orders to allow the applicant to present his case while there were cogent reasons in support of the prayers as such condemned the applicant unheard.

(2) Whether the High Court entertained the case that was time barred.

(3) Whether the High court delivered judgement in favor of the respondent while there was no any evidence furnished to support its claims against the applicant.

Mr. Emmanuel submitted that it is a settled law that where an issue of illegality is raised as a reason for applying for extension of time, such reason amount to good cause. To support this contention, he cited a number of cases including **Principal Secretary Ministry of Defense and National Service Vs. Devram Valambia [1991] T.L.R 387, Engineering and Marketing Limited v. Citi Bank Tanzania Limited, Consolidated Civil Reference No.6,7 and 8 of 2006 CA (Unreported); Lyamuya Construction Co. Ltd V. Boards of Trustees of Young Womens Christian Association of Tanzania, Civil Application No. 2 of 2010 (Unreported) and Selina Chibago V. Finhas Chibago, Civil Appeal No. 2 of 2006 CA (Unreported) Rutakangwa, JA**

Basing on the above cases Mr. Emmanuel submitted that the illegality of the impugned decision was clearly visible on the face of record that the

High Court had issued a garnishee order against the government without affording it a hearing which was contrary to the rules of natural justice. In his view these illegalities can only be rectified by the Court of Appeal after the applicant is granted this application.

In response, Mr. **Msuya, Advocate** commenced his submission by keeping the matter in a right context that what was delivered by this court on 11 July 2008 was a Judgment and Decree and not what is stated by the applicant who prayed for extension of time to lodge notice of appeal against "**Ruling and Order**." I appreciate Mr. Msuya for bringing this in a correct perspective. Surely, the respective decision is a judgment and decree and not a ruling and order.

Having adopted the contents of the Respondent's counter affidavit Mr. Msuya coincided with the applicant's submission that what amounts to good cause cannot be laid by any hard and fast rule but dependent on circumstances of each case and that the factor to be considered are not exhaustive. To support this contention Mr. Msuya cited the cases of **Registered Trustees of Khoja Ithnasheri Jamat and 12 Others V. Salum Juma Jusa and Another, Civil Application No. 44 of 2017 at 9 CAT at Dar es Salaam** which cited with approval the case of **Regional Manager, TANROADS Kagera vs Ruaha Concrete Company Limited, Civil Application No. 96 of 2007 (unreported).** He further cited the cases of **Isabel John vs. Silverster Magembe Cheyo and 2 Others, Commercial Case No. 49 of 2003 pg 8** and **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Limited vs. Mbeya Cement Company Limited and National Insurance Cooperation (T) Limited, [2005] TLR. P. 41**.

Having stated the above laid principles in the cases cited, Mr. Msuya reiterated what was stated in the counter affidavit that before the striking out of the appeal by Court of Appeal on 31st May, 2021, the matter was earlier called for hearing on 27th March 2020 where the applicant conceded that the records were incompetent for containing an invalid Certificate of Delay. He stated further that the Court of Appeal allowed the applicant to file supplementary record under **Rule 96(7) of the Court of Appeal Rules** and the matter was adjourned to 23rd March 2021 when the court found that its order dated 27th March 2020 was not yet complied with. Mr. Msuya continued to state that on 31st May 2021, the appeal was struck out since the record of appeal was yet again invalid for failure to contain the transcript of the case. According to Mr. Msuya, **Rule 96 (8) of the Court of Appeal Rules** do not allow the court to issue similar orders for the second time and the advocate who affirmed the instant affidavit is the same advocate who acted for the applicant in the Court of Appeal. Mr. Msuya considered this narration to describe negligence on the part of the applicant in pursuing the struck-out application.

In addition Mr. Msuya challenged the account given by the Respondent for the alleged 10 days lapsed between the date the appeal was struck out and the date of filing the application. It is Mr. Msuya's submission that the applicant's affidavit does not explain out the six (6) days from 4th June when the application was electronically filed and on 10th June, 2021 when it was filed physically. He cited some case laws which emphasized that to grant the extension of time the Court should ensure that each day of delay must be accounted for. The cases he cited are **Nicholaus Hamis and 1013 Others vs. Consolidated Holding Corporation And 2 Others, Civil Reference No. 5 of 2016 p 8 & 9**; and **Tanzania Fish processors Ltd vs. Eusto K. Ntagalinda Civil Application No. 41/08 of 2018 CAT at Mwanza (Unreported) p 9 & 10;**

It is the submission of Mr Msuya that the applicant has not explained any details on what was happening in those 6 days, and therefore he has not met the test required for granting of extension of time as laid in the above cited cases.

Mr. Msuya identified more alleged unaccounted period of time between 31st May to 2nd June 2021. He submits that, the statement in the affidavit that this time was used by the applicant (unnatural person) who was undergoing some internal processes is hearsay and inadmissible as this information is within the knowledge of the officials of the applicant. Mr. Msuya asked for the court not to admit this information. He referred to the case of **Unyangala Enterprises Ltd and 5 others vs. Stanbic Bank (T) Limited, Civil Application No. 56 of 2004 CAT**.

Mr. Msuya challenged the applicant's statement which accounted for the ten days. According to him, this statement appeared for the first time in the submission while it was not deposed in the affidavit. The statement contains the words:

> ".....The 10 days delay after the appeal was struck out was used by the counsel for the applicant and the officer of the applicant to discuss and agreed to starts afresh to process of the appeal and by commencing with seeking extension of time to lodge a notice of appeal".

According to Mr. Msuya, this piece of information is evidence introduced in the submission contrary to the position established in **TUICO case (Supra**). He asked for the same to be expunged, which will leave the 10 days unaccounted for.

While recalling the striking out of the applicant's appeal in the Court of Appeal as a second finding by the Court of Appeal on incomplete record,

Mr. Msuya challenged the applicant's blame to the Registrar of this court and the seeking of refuge on technical delay. He argued that parties and advocates are expected to conduct their cases diligently and failure to check the law properly is inexcusable negligence. He relied on the cases of **Umoja Garage v. National Bank of Commerce TLR [1997] AT P.112 CAT** and **Kambona Charles (As administrator of the estate of the late Charles Pangani) vs Elizabeth Charles, Civil Application No. 529/17 of 2019 CAT at Dar es Salaam at pp 7 & 8.**

Citing the case of **Yusuph Same and Another V. Hadija Yusuph, Civil Appeal No.1 Of 2002 (Unreported),** Mr. Msuya contended that a **mistake** done by an advocate through **negligence** or lack of diligence cannot constitute a ground for condonation of delay.

Mr. Msuya challenged the applicability of the case of **Fortunatus Masha v. William Shija (supra)** because in the present case there is;

(1) Repeated negligence on the part of the advocate in handling the present case while in the Fortunatus case there was none.

(2) The advocate has failed to account for the 10 days of delay.

In responding to the illegality of the impugned decision, Mr. Msuya submitted that the 3 illegalities named in paragraph 14 (a) (b) and (c) of the applicant's submissions have not met the test set out in the cited case laws. According to him point (a) and (c) are not points of law at all as none of them can be discovered without long drawn arguments with evidence to be given and analyzed. He referred to the Court of Appeal case of **Ngao Godwin Losero Vs Julius Mwarabu, COA Civil Application No.10 Of 2015 at Arusha (Unreported)** at pp7/8 which stated;-

"Since every party intending to appeal seeks to challenge a decision either on point of law or facts, it cannot in my view, be

said that in Valambia case the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should as of right be granted extension of time if he applies for one. The court there emphasizes that such point of law must be that of sufficient importance and I would add that it must also be apparent on the face of records such as the questions of jurisdiction not one that would be discovered by a long-drawn argument or process".

According to Mr. Msuya the three illegalities named in paragraph 14 (a) (b) and (c) do not meet the test in the above case because **firstly,** items (a) and (c) above are not points of law and none can be discovered without long drawn arguments or processes and without evidence is given and analyzed. **Secondly,** according to Mr. Msuya, ground (b), although can be raised as point of law, however, the time bar is not apparent because it cannot be decided without reference to law and hearing of parties on the matter by considering what he asserts to be unopposed facts deposed under paragraphs, 2.10 (i),(ii), (a), (b), (c) and (d) of the counter affidavit read together with annex TMA-4. T**hirdly,** Mr. Msuya submitted that, the Applicant have not said anything on this point of time bar which leaves the Court with nothing at its disposal to establish whether there is legality or otherwise in the judgment dated 11th July, 2008.

It is the submission by Mr. Msuya that the three factors (a), (b) and (c) supra do not constitute "illegality" envisaged in law therefore this ground should be dismissed as well.

On another line of argument, Mr. Msuya stated that courts of law are to issue rulings, judgment, orders and, or decrees that are practically

enforceable as per **Lujuna Shubi Ballonzi, Senior versus Registered Trustees of Chama cha Mapinduzi TLR [1996] at p. 208,** and not to determine issues of general interest. According to Mr. Msuya, to maintain an action before a court a litigant must assert interference with or deprivation of, or threat of interference with or deprivation of, a right or interest which the law takes cognizance of. He asserts that in the instance case the Applicant is requesting for an order which, even if it is granted, will serve no legal purpose because the judgment and decree entered on 11th July, 2008 which the Applicant seeks to impugn is an "ex-parte judgment" or a judgement entered without hearing an adverse part which can easily be set aside or varied **under Rule 23 (i) of the High Court (Commercial Division) Rules 2012 as amended**. According to Mr. Msuya, a party seeking to appeal against an ex-part judgment can do so only after he has exhausted the procedures to set aside the said judgment. He cited the case of **Yara Tanzania Limited v DB Shapriya and Co. Limited, Civil Appeal No. 245 of 2018** CAT at Dar Es Salaam to support his argument.

Having considered and analyzed the submissions made by both parties I find the main issue for consideration to be **whether the applicant has adduced sufficient cause to warrant grant of extension of time to lodge a notice of appeal**. A number of factors have been identified by the parties to provide the test to be met prior to granting of extension of time. As rightly submitted by the parties, the list of these factors is not exhaustive but, each case stands on its own circumstances. (See **Vodacom Foundation v. Commissioner General TRA (supra); Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited** *(supra);* **Tanga Cement Company Limited v. Jumanne D. Massanga and another, Civil Application No. 6 of 2001, Dar es Salaam City Council v. Jayantilal P. Rajani, Civil**

Application , No. 27 of 1987; and Yusufu Same and another v. Hadija Yusufu, *(supra)* **(all unreported),)** (*supra*). All these cases were cited with approval in **Bank M T. Ltd vs Enock Mwakyusa (Civil Application No.520 of 2017) [2018] TZCA 291.** At least, from the submissions, parties have identified the following to involve the center of competing arguments in the instant application.

(1) Diligence on the part of the applicant,

(2) An account for all the days of delay and

(3) Serious issue of the law (illegality) to be determined or attended before the court of appeal

Fulfilling these factors in applications for extension of time have been an emphasis in various case laws some of which have been cited by the parties. **(See Mbogo V. Shah [1968] EA)**

At this point, I will start to address the issue of diligence. While Mr. Msuya for the respondent asserts negligence on the part of the applicant in handling the Appeal previously filed in the Court of Appeal, Mr. Emmanuel for the applicant claims to have exercised diligence in the said appeal and throughout the lifespan of the case. Mr. Emmanuel pleaded technical delay as a cause for the striking out of the previous appeal.

It is not in dispute that technical delay has been considered in our case law to be one of grounds to justify extension of time. (See **Fortunatus Masha Vs. William Shija and Another**)*(supra)* and **Bank M T. Ltd vs Enock Mwakyusa** (supra); **Salvand K.A. Rwegasira v. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006, CAT at Dar es Salaam** (Unreported), **Yara Tanzania Limited v. DB Sharpriyaand Co. Limited, Civil Application No. 498 of 2016, CAT at Dar es Salaam** (unreported) **,Zahara Kitindi and another v. Juma**

Swalehe and 9 others, Civil Application No. 4 of 2005 (unreported) **and Bharya Engineering and Contracting Co. Ltd v. Hamoud Ahmad @ Nassor, Civil Application No. 342/01 of 2017, CAT, at Tabora** (unreported). Mr. Msuya refuted reliance on technical delay where the technical error was caused by negligence of the party who wants to rely on such technical delay as what he alleges to be the situation in the instant application. According to Mr. Msuya, the two findings on incomplete record in the applicant's appeal in the Court of Appeal means inexcusable lack of diligence and seriousness on the part of the applicant, which should not be entertained and excused in this matter.

At this point, I am asking myself, to what extent the negligence leading to striking out of an appeal affects the granting of the extension of time to refile such an appeal. In most authorities, technical delay have been considered to be excusable when there has been a striking out of an appeal filed timely and when the applicant has not negligently delayed the process by taking of the action behind schedule. I have carefully read **Yusuph Same cited** by Mr. Msuya contending that lack of diligence cannot constitute a ground for condonation of delay. In real sense, the circumstances in that case differ from the instant case. In this case, there was a striking of an appeal which was filed timely due to error which was not related to lagging behind in taking court action behind the schedules. The following words are derived from (**Yusuph Same**):

> *"It is also common ground that on 24.10.1996 the respondent, through her advocate on legal aid, filed an application for leave to appeal to the Court. Obviously, this contravened the requirement of Rule 43 (a) of the Court of Appeal Rules, 1979 which limits the period for so doing to 14 days of the date of the decision intended to be appealed against. It was about two months out of time. This was caused by the respondent's*

counsel at that time who mistakenly believed that time started running from 15.10.1996 when he received the necessary documents. Generally speaking, an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time."

From the above words from **Yusuph Same**, the addressed negligence was on failure to take action timely which is distinguishable from the instant matter where the alleged negligence is based on repetitive finding of incomplete record by the Court Appeal which resulted the striking out of the appeal. It has to be noted that the said appeal was timely filed. Despite all these, in **Yusuph Same**, yet the Court of Appeal found such negligence to be sufficient reasons for delay as I quote hereunder:

"In the Instant case the respondent had done all that she could, leaving the matter to the hands of her advocate who had been assigned to her on legal aid. In the circumstances, while accepting that there were some elements of negligence by her counsel, in the circumstances of the case, we join hands with our learned brother Mfalila JA in the case cited supra, and hold that the learned counsel's negligence constituted sufficient reason for delaying in lodging the appeal between 1.8.1996 and 24.10.1996"

In the instant matter, the first appeal in the Court of Appeal was ended by being struck out, meaning that the appellant could refile it after rectification of the errors which featured in the appeal. If there wasn't a presumption that the appeal can be refiled, the court could have dismissed it to close all options of refiling.

In **Bank M T Limited vs Enock Mwakyusa** (supra) the Hon. Justices of Appeal quoted with approval the following words from Fortunatus Masha (supra) at p. 155;

> *"... a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be in competent and afresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal."*

Having quoted the above words, the court proceeded to state;

> *"I subscribe to the view taken by the Court in the above cases. The applicant Bank, having been duly penalized by having Civil Appeal No. 109 of 2012 struck out by the Court and the High Court (Labour Division) dismissing Miscellaneous Application No. 133 of 2017, the same cannot be used yet again to determine the timeousness of applying for filing the fresh Notice of Appeal in a bid to file a fresh appeal. On the authority of the decisions of the Court cited, that was an excusable technical delay on the part of the applicant which constitutes good cause under rule 10 of the Rules, under which*

the notice of motion has, inter alia, been taken out, to grant the order sought"

As articulated in the above cited cases of **Bank M Limited**, the negligence of an applicant's advocate in lacking diligence to ensure that the appeal constituted correct and complete record is penalised by the striking of the said incompetent appeal. This means, the applicant's negligence in filing incomplete record of appeal which resulted the striking out of the said appeal cannot be used again to refuse extension of time to refile a fresh appeal. In these circumstances, I hold that the alleged negligence of the applicant in filing incomplete record is not sufficient to negatively affect the extension of time to relodge the notice of appeal since that negligence is already penalised by the striking out of the appeal. The respondent argument on this point accordingly fails.

The next point of debate in this matter lies on the applicant's account for all the days of delay. To put the matter in a clear perspective, it is appropriate to recollect the steps taken by the applicant after the striking out of the Appeal in the Court of Appeal. It is not disputed that applicant's appeal was struck out by the Court of Appeal on 31st May 2021, and after 3 or 4 days, this application was filed on 4th June 2021 through online system and presented physical documents on 10th June 2021. Mr. Msuya's contention is that the applicant has not accounted the days between the date the application was filed electronically and the date it was filed physically. It is well established in our rules of procedure that a document is considered to have been properly filed when the electronic filling is accomplished. This is clear under Section 21 of the **Judicature and Application of Laws (Electronic Filing) Rules GN. No. 148 2018** which provides:

"21.-(1) A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court, or it is rejected.

(2) A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day."

From the above provision, since it is not disputed that the application was electronically filed on 4 June 2021, it is apparent that this date is the day when the filling was done and not the date the parties presented the physical documents of application in court. As such the day to be accounted for is only from 31st May 2021 when the appeal was struck out to 4th June 2021 when the application was electronically filed which makes 4 days. Now what follows is whether the 4 days between 31st May 2021 and 4th June 2021 have been correctly accounted for by the applicant. Mr. Msuya claimed that the account of these days came out during the written submissions and not in the affidavit. I have gone through the affidavit and found that paragraphs 10, 11 and 12 explain what was happening in these days. This means the account did not happen for the first time in the submission. The question is whether the account of these days is sufficient to justify extension of time.

In **Bank M T Limited vs Enock Mwakyusa** (supra) the Ruling of the applicant's application was supplied to the applicant on 24.10.2017 when time began to count and the application in question in the court of appeal was filed on 08.11.2017 which constituted 10 days. The Court of Appeal allowed extension of time. In comparison with the instant application there are 4 days lapse of time which the applicant has explained to have been

used to prepare the application. In my view, use of 3 or 4 days to prepare an application like the instant one is a sufficient account of the days.

On illegality, I have considered the contentious arguments by the parties. The applicant considered three of the grounds of appeal to be based on point of law. These are:

(a) The claim that the court condemned the applicant unheard,

(b) That the court entertained a time barred case and

(c) Delivery of judgment in favour of the respondent without supporting evidence.

According to Mr. Msuya point (a) and (c) above are not points of law because they need long drawn arguments and evidence to discover any point of law in them. He admits existence of point of law in item (b) although he disputes it's reliance as it cannot be decided without reference to law. According to Mr. Msuya, it needs a hearing to determine the time bar. From this debate, at least it is not in dispute that time bar constitutes a pint of law. This prima facie element needs no more details in this ruling in the context drawn in **Principal Secretary Ministry Of Defense and National Service Vs. Devram Valambia [1991] T.L.R 387,** It Was **Held** THUS;-

> *"In our view, when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for purpose, to ascertain the point and if the alleged illegality being established, to take appropriate measures to put the matter and the record straight".*

The same position was articulated in VIP **Engineering and Marketing Limited v. Citi Bank Tanzania Limited, Consolidated Civil Reference No.6,7 and 8 of 2006 CA (Unreported)** it was stated;

> *"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes* ***"sufficient reason"*** *within the meaning of Rule 8 of the rules for extending time".*

Going into further details will equate this court to an appellate court to decide on the substantive part of the intended appeal. It suffices to hold that there is a point of law which is intended to form part of the intended appeal if time is extended to allow it's filing.

From the above analysis, it is obvious that the debated important tests of extension of time to lodge appeal, that **is Diligence** on the part of the applicant, **account for the days of delay** and **Establishment of a point of law,** all have been met to make a **good cause for extending time to lodge a notice of appeal out of time.** Consequently, this application is hereby granted. The notice of appeal to be lodged within 14 days from the date of this Ruling. No order as to costs.

It is so ordered.

Dated at Dar Es Salaam in this 27th day of October 2021

THE HIGH COURT OF TANZANIA COMMERCIAL DIVISION

K.T.R. MTEULE,

JUDGE

27/10/2021