

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

CIVIL APPLICATION NO. 516/20 OF 2017

BG INTERNATIONAL LIMITEDAPPLICANT

VERSUS

COMMISSIONER GENERAL (TRA)RESPONDENT

**(Application for extension of time to appeal from the judgment and
decree of the Tax Appeals Tribunal)**

(Dr. Twaib - Chairman)

dated the 2nd day of May, 2017

in

Tax Appeal No. 17 of 2015

RULING

8th May & 12th June, 2018

MWANGESI, J.A.:

From what could be discerned from the affidavit sworn by Mr. Wilson Kamugisha Mukebezi, the learned counsel for the applicant, the applicant was aggrieved by the decision of the Tax Revenue Appeals Tribunal in Tax Appeal No. 17 of 2015, which was handed down on the 2nd day of May, 2017 wherein, the findings of the Tax Revenue Appeals Board in consolidated Tax Appeals No. 28 and 29 of 2014 was upheld.

On the 11th day of May, 2017, the applicant lodged a notice of appeal to challenge the decision of the Tax Revenue Appeals Tribunal. On the

same date, the applicant wrote a letter to the Registrar of the Tax Appeals Tribunal, requesting for proceedings, judgment and decree, which he did also serve to the respondent on the same date. It is further deponed by the learned counsel that, on the 5th day of July, 2017, the applicant wrote to the Secretary of the Tax Revenue Appeals Board, requesting for exhibits which had been tendered and admitted in evidence during the proceedings. And finally, on the 31st day of August, 2017, the applicant lodged in the Court Civil Appeal No. 191 of 2017.

In the application at hand which has been made under the provisions of Rules 10 and 96 (6) of the Court of Appeal Rules, 2009 (**the Rules**), the applicant is moving the Court to issue an order of leave for extension of time, within which the applicant can file a supplementary record of appeal, in which it will include in the record of appeal, exhibits which were tendered and admitted in evidence at the Tax Revenue Appeals Board in consolidated Appeals No. 28 and 29 of 2014, as well as the applicant's letter to the Tax Revenue Appeals Tribunal, requesting for copies of proceedings, judgment and decree in Tax Appeal No. 17 of 2015.

According to the grounds contained in the notice of motion, the applicant has averred that, he lodged Civil Appeal No. 191 of 2017 without

including therein endorsed exhibits, which had been tendered and admitted in evidence in the proceedings at the Tax Revenue Appeals Board in consolidated Appeals No. 28 and 29. In the same, he also omitted to include the applicant's letter requesting for proceedings, judgment and decree in Tax Appeal No. 17 of 2015 because to date, he has not been supplied with the same by the Tax Revenue Appeals Board. On the 3rd January, 2018, the applicant's counsel lodged written submission in compliance with the requirement under the provision of Rule 106 (1) of **the Rules**, to support the notice of motion.

On the other hand, the application by the applicant has been resisted by the respondent through the affidavit in reply, which was sworn by one Gloria Achimpota, an advocate instructed to represent the respondent. Additionally, the learned counsel did file written submissions in reply to the written submissions lodged by his learned friend the counsel for the applicant. This was done pursuant to the provisions of Rule 106 (8) of **the Rules**.

When the application was called on for hearing before me on the 8th day of May, 2018, Mr. Wilson Mukebezi Kamugisha learned counsel being assisted by Ms Salome Gondwe also learned counsel, entered appearance

for the applicant whereas, Mr. Marcel Busegano learned counsel, represented the respondent.

In his submission before me to amplify the notice of motion, the learned counsel for the applicant sought permission from the Court, which he was granted, to adopt the written submissions which he had earlier on lodged, as well as the affidavit in support of the notice of motion, to form part of his oral submission. He further argued in his oral submission that, the documents sought to be included in the record of appeal are so crucial to the appeal or else, the appeal would be rendered defective and therefore, incompetently before the Court as per the holding in the case of **African Barrick Gold Mine Plc Vs. Commissioner General (TRA)**, Civil Appeal No. 77 of 2016.

The learned counsel went on to submit that, in the instant matter, the applicant did duly perform his assignment by writing to the secretary of the Tax Revenue Appeals Board, requesting for the exhibits which had been tendered and admitted in evidence during the proceedings only to find that, until at the time of lodging the appeal to this Court, they were yet to be supplied. In the circumstances, in line with what was held in the case of **Dowans Tanzania Limited and Another Vs. Tanzania Electric**

Supply Company Limited (TANESCO), Civil Application No. 53 of 2012, the applicant cannot be condemned to shoulder the blames occasioned by the management of the Tax Revenue Appeals Board.

Responding to the averment contained in the written submissions by his learned friend that, the applicant ought to have applied for the exhibits at the time he was lodging his appeal to the Tax Revenue Appeals Tribunal, Mr. Kamugisha argued that, such averment by his learned friend was erroneous for the reason that, in terms of the stipulation under the Tax Revenue Appeals Act, exhibits tendered and admitted in evidence during trial at the Tax Revenue Appeals Board, are not among the documents required in lodging an appeal to the Tax Revenue Appeals Tribunal. That being the case, he could not have requested them at that particular moment because they were not needed. In conclusion, the learned counsel for the applicant implored the indulgence of the Court to grant the sought relief and extend time to enable them to lodge the supplementary record of appeal.

In rebuttal, the learned counsel for the respondent also asked the Court to adopt the affidavit in reply which had been earlier on lodged, as well as the written submissions which were lodged in reply to the one filed

by his learned friend, to form part of his oral submission. He argued further that, the applicant has failed to demonstrate in his application any plausible cause so as to move the Court to grant the sought extension of time. He challenged the act by the applicant to lodge the appeal to this Court without first obtaining the necessary documents as having been occasioned by mere inaction on the part of the applicant, and not because the Tax Revenue Appeals Board failed to supply them with the documents within time.

If at all the request for the alleged exhibits was made within the prescribed period, Mr. Busegano went on to submit, he could not see the reason as to why, the applicant decided to lodge the appeal to this Court before securing the exhibits which he had requested from the Board. This is so from the fact that, the law is clear that, the time spent in securing the necessary documents to append to the appeal has to be excluded by a certificate which has to be issued by the Registrar to that effect.

Since in the instant matter there was no certificate issued by the Registrar excluding certain period in the computation of the limitation period, it *ipso facto* implies that, the incomplete record of appeal lodged by the applicant was made just through negligence. And, in the eyes of law,

there is no any appeal before the Court, which can be supplemented by supplementary record of appeal. He therefore, urged the Court to dismiss the application for want of merit with costs.

The issue which stands for determination by the Court, is whether or not, there has been advanced sufficient cause by the applicant to entitle it to the sought extension of time, so that it can lodge a supplementary record of appeal to include the missing exhibits in the record of appeal. As noted above in his oral submission, the applicant's learned counsel has shifted the blames for the failure to append the exhibits admitted at the Tax Revenue Appeals Board, to the record of appeal, to the management of the Tax Revenue Appeals Board. It is correct as argued by the learned counsel for the applicant that, where it has been established that, the applicant did request for the necessary documents to append to the appeal within the prescribed period, there was nothing else which he could have been expected to do. In the words of the late Makame J.A. (as he then was), in **Transcontinental Forwarders Limited Vs Tanganyika Motors Limited** [1997] TLR 328, which was cited in **Dowans Tanzania Limited and Another Vs. TANESCO** (supra):

"the applicant was home and dry"

The question which I had to ask myself is whether the above quoted principle, can be invoked in the circumstances of the application at hand. This prompts the question as to whether the applicant in the instant application, indeed performed his assignment within the time prescribed by law, so that he can be said to have been home and dry.

According to the stipulation under Rule 90 (1) of **the Rules**, an application for certified documents to be included in the record of appeal has to be made within thirty days of the date of the decision against which it is desired to appeal. It is noted that, the decision intended to be challenged by the applicant in the instant application, was delivered on the 2nd day of May, 2017. Under the circumstances, the request for the exhibits to be included in the record of appeal ought to have been made not later than thirty days from that date.

Nonetheless, according to annexure BG 1-2 referred to in paragraph 7 of the affidavit sworn by the applicant's advocate in support of the notice of motion, the letter to the Secretary of the Tax Revenue Appeals Board requesting for the exhibits which had been tendered and admitted in evidence during trial, was written on the 5th July, 2017 that is, after the elapse of about sixty - four (64) days. This period was by very far beyond

the thirty days stipulated in **the Rules**. In that regard, evidently the applicant cannot place reliance on the holding in the case of **Dowans Tanzania Limited and Another Vs. TANESCO** (supra), because the circumstances are different in that, while in **Dowans's** case the request for the documents was made within time, in the current application the request was made beyond the time prescribed by the law.

The wording of the provisions of Rule 90 (1) of **the Rules**, which regulates the request for the necessary documents to include in the appeal such as the exhibits requested by the applicant read:

"Subject to the provisions of Rule 128, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date of when the notice of appeal was lodged with:

- a) a memorandum of appeal in quintuplicate;*
- b) the record of appeal in quintuplicate;*
- c) Security for costs of the appeal;*

*Save that where an application for a copy of proceedings in the High Court has been made **within thirty days of the date of the decision desired to appeal**, in computing the time within which the appeal is to be instituted, be excluded*

such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant.”

[Emphasis supplied]

What is apparent in the light of the wording of the above quoted provision of law is that, a request for certified copies of documents intended to be appended to the record of appeal, has to be made within thirty days of the decision sought to be impugned. In a situation where there has been failure to comply within such period, such an anomaly can only be remedied by way of an application for extension of time. See: **Geita Gold Mine Limited Vs. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 39 of 2017 (unreported).

Premising my views on the stipulation under the provisions of Rule 90 (1) of **the Rules**, it is my finding that, annexure BG1 – 2 to the notice of motion that is to say, the letter to the secretary of the Tax Revenue Appeals Board requesting for exhibits which had been tendered and admitted in evidence during the trial, which was written after the expiration of the time prescribed by the law without being granted leave, was ineffectual. The applicant was legally obligated to apply to the Tribunal for

extension of time to request for the exhibits first, before coming to this Court. In that regard, I am constrained to join hands with the learned counsel for the respondent and hold that, there is no merit in this application. Consequently, it is accordingly dismissed with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 6th day of June, 2018.

S.S. MWANGESI
JUSTICE OF APPEAL

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


B.A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL