

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**CIVIL APPLICATION NO. 166/16 OF 2021**

**ABDULRAHMAN MOHAMED ALLY ..... APPLICANT**

**VERSUS**

**TATA AFRICA HOLDINGS (T) LIMITED..... RESPONDENT**

**(Application for extension of time to lodge application for revision from  
the decision of the High Court of Tanzania (Commercial Division)  
at Dar es Salaam)**

**(Mruma, J)**

**Dated the 25<sup>th</sup> day of May, 2016**

**Commercial Case No. 16 of 2016**

.....

**RULING**

*13<sup>th</sup> & 24<sup>th</sup> February, 2023*

**KIHWILO, JA.**

In this application, Abdulrahman Mohamed Ally (the applicant), is seeking orders for the enlargement of time within which to lodge an application for revision against the decision of the High Court of Tanzania (Commercial Division) at Dar es Salaam dated 25<sup>th</sup> May, 2016 in Commercial Case No. 16 of 2016. The notice of motion is predicated under rules 10 and 48 (1) of the Tanzania Court of Appeal Rules, 2009

(the Rules). It is supported by an affidavit sworn by Stephen Masha, learned advocate representing the applicant.

The applicant has raised four main grounds; **one**, that the ruling sought to be revised is tainted with illegalities; **two**, that the impugned ruling finalized the matter without consideration of the constitutional right of fair hearing; **three**, that, the applicant's failure to lodge revision within the prescribed time was occasioned by his attempt to lodge an appeal believing that the ruling dated 25<sup>th</sup> May, 2016 by Mruma, J. was a Judgment and, **four**, any other grounds to be raised. Before me, the applicant, was represented by Mr. Stephen Masha, learned advocate.

On the other hand, the respondent, TATA AFRICA HOLDINGS (T) LIMITED is resisting the application. Ms. Blandina Kihampa, the learned advocate who represents her, filed an affidavit in reply in which she is pressing the Court to dismiss the application because the applicant has failed to show good cause for the delay as envisaged by rule 10 of the Rules.

Mr. Masha, prefaced his submission by praying to adopt the notice of motion, affidavit and written submissions in support of the application and highlighted a number of issues in clarifications.

Arguing further in support of the application, the learned counsel submitted that, extension of time being a matter within the court's discretion depends upon the applicant advancing good cause, but what amounts to good cause is very subjective, as there is no any hard and fast rule, but will be determined by reference to all the circumstances of each particular case. Reliance was placed on the case of **Alliance Insurance Corporation v. Arusha Art Limited**, Civil Application No. 512/2 of 2016 (unreported).

He further, went on to cite some guiding factors as they were well articulated in the celebrated case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

The learned counsel, went further to describe the reasons or factors that contributed to the delay in lodging the application. These factors were threefold;

**One**, is technical delay, that relates to failure to take action in time owing to spending time prosecuting a matter in court and cited the case of **Fortunatus Masha v. William Shija** [1997] T.L.R. 154 and **Elly Peter Sanya v. Ester Nelson**, Civil Appeal No. 151 of 2018

(unreported) and argued that, in the instant application whose impugned ruling was delivered on 25<sup>th</sup> May, 2016, the applicant, from 3<sup>rd</sup> June, 2016 to 19<sup>th</sup> March, 2021, was prosecuting an appeal which ultimately was struck out for being improperly before the Court. In his considered opinion, this period is well accounted under paragraphs 5 to 7 of the supporting affidavit.

**Two**, is real delay, meaning the period between 19<sup>th</sup> March, 2021 when the appeal was struck out and 9<sup>th</sup> April, 2021 when the instant application was lodged in Court, and the applicant submitted that, this period can be discerned from paragraphs 8 and 9 of the supporting affidavit.

**Three**, illegality, which in his strong opinion is a ground for extension of time and contended that, the law is settled that, a claim of illegality of the challenged decision constitutes sufficient cause for the extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for delay. He paid homage to the decision of **Tanzania Breweries Limited v. Herman Bildad Minja**, Civil Application No. 11/8 of 2019 and **Marry Rwabizi t/a Amuga Enterprises v. National Microfinance Pic**, Civil Application No. 378/01 of 2019 (both unreported).

The learned counsel, further argued that, once there is a claim of an illegality, a Single Justice hearing an application for extension of time has no mandate to consider substantive issues that are to be dealt with by the full bench. He cited our unreported case in **Exim Bank (Tanzania) Limited v. Johan Harald Christer Abrahamsson & Others**, Civil Reference No. 11 of 2018 and **Attorney General v. Mkongo Building and Civil Works Contractors Ltd & Namtumbo District Council**, Civil Application No. 266/16 of 2019 (unreported) to facilitate his proposition.

On that account, the learned counsel argued that, the applicant has managed to demonstrate good cause for his failure to lodge the application for revision within sixty (60) days as required by rule 65 (4) of the Rules, and contended that, justice will be rendered if time will be extended to lodge the application for revision.

In response, Ms. Kihampa prayed to adopt the affidavit in reply and written submissions earlier on lodged in Court and contended that, powers to extend time is a discretion of the court which has to be exercised judiciously. She went on to submit that, there are guiding principles which the court has to look at in determining the application, referring to the case of **Royal Insurance Tanzania Limited v.**

**Kiwengwa Strand Hotel Limited**, Civil Application No. 111 of 2009 and **Attorney General v. Twiga Paper Products Limited**, Civil Application No. 108 of 2008 (both unreported).

Ms. Kihampa submitted that, the respondent was opposing the application for three main reasons. **First**, the intended application is not tenable because the impugned decision is appealable as of right in terms of section 5 (a) and (c) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] since the High Court was exercising its original jurisdiction. **Second**, the available remedy for the applicant is to apply for review because the inconsistency between the High Court's decision delivered on 25<sup>th</sup> May, 2016 and the drawn order is not to be cured by an application for revision but rather application for review; and **Third**, the counsel for the applicant, in lodging the appeal in Civil Appeal No. 58 of 2017 which was struck out feeling that, the ruling was a judgment is a manifestation of ignorance of law which is not an excuse, and cited the case of **A. H. Muhimbira and Others v. John K. Mwanguku**, Civil Application No. 13 of 2005 (unreported) in which the Court faced with an akin situation we emphasized that, ignorance of legal procedure does not warrant the court to extend time. She finally submitted that, the application is incompetent and therefore, it should be dismissed with costs.

In a brief rejoinder, Mr. Mosha submitted that, at this juncture the Court is only to confine itself on considering whether or not there is good cause for extension of time and not to focus on substantive matter which is the purview of the full bench. He emphasized that, the applicant was prevented by technical delay and that, there was no ignorance in pursuing Civil Appeal No. 58 of 2017 which was later struck out by this Court. He rounded off by imploring us to grant the prayer and that costs in this application be costs in the course.

I begin by stating the obvious that the discretion of the Court to extend time under rule 10 of the Rules is upon the applicant party advancing good reasons for his/her failure to do what ought to have been done within the time set forth by the law. This has been stressed in a number of cases, including those of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd.**, Civil Application No. 13 of 2010 and **Victoria Real Estate Development Ltd. v. Tanzania Investment Bank & 3 Others**, Civil Application No. 225 of 2014, (both unreported).

The court's discretion to extend time under rule 10 only comes into existence after sufficient reasons for extending time to have been established. In determining whether sufficient reason for extension of

time exists, the court seized of the matter should take into account not only the considerations relevant to the applicant's inability or failure to take the essential procedural step in time, but also any other considerations that might impel a court of justice to excuse a procedural lapse and incline to a hearing on the merits. Such other considerations will depend on the circumstances of the individual cases and include, but are not limited to, such matters as: the promptitude with which the remedial application is brought, whether there was manifest breach of the rules of natural justice in the decision sought to be challenged on the merits, and the prejudice that may be occasioned to either party by the grant or refusal of the application for extension of time. This broad approach is preferable as a judicial discretion is a tool, or device in the hands of a court for doing justice or, in the converse, avoiding injustice, See, for instance, **Shah v. Mbogo and Another** [1967] E.A. 116.

However, it is significant to emphasize that the Court's discretion in deciding whether or not to extend time must be exercised judicially and not arbitrarily or capriciously, nor should it be exercised on the basis of sentiments or sympathy. Fundamentally, the said discretion must aim at avoiding injustice or hardships resulting from accidental inadvertence or excusable mistake or error, but should not be designed at assisting a



person who may have deliberately sought it in order to evade or otherwise to obstruct the cause of justice

As already pointed out, the appellant is challenging the impugned decision on the grounds of illegality in that, the High Court Judge erroneously granted the prayers of summary suit in the application for extension of time to lodge leave to defend the summary suit, as a result the learned High Court Judge entered judgment in the ruling and went ahead to extract a decree from the ruling of the court which essentially dealt with application for extension of time to lodge application for leave to defend the suit.

I am mindful of the fact that there are certain decisions of this Court suggesting that a single Justice should not deal with the substance of the matter for which an extension of time is sought because that is the province of the full bench. I am therefore not prepared to stretch my muscles beyond what is expected of a single Justice in the instant application while aware that, it is my jurisdiction to separate the wheat from the chaff as illegality of the impugned decision is not a panacea for all applications for extension of time. It is only one in situations where, if the extension sought is granted, that illegality will be addressed.

All in all, this Court stated in the case of **Principal Secretary, Ministry of Defence v. Devram Valambhia** [1992] T.L.R. 182 at page 189 that:

*"where 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 be established, to take appropriate measures to put the matter and the record straight."*

Corresponding observations were made in the case of **Attorney General v. Oysterbay Villas Limited and Another**, Civil Application No. 299 of 2016 and **VIP Engineering and Marketing Limited and Two Others v. Citibank Tanzania Limited**, Consolidated Civil Reference Nos. 6, 7 and 8 of 2006 (both unreported). Without attempting to dig deep into the substance of the claim of illegality of the High Court's decision, is it, in my view, that, this contentious matter is worthy legal point for the consideration by the Court.

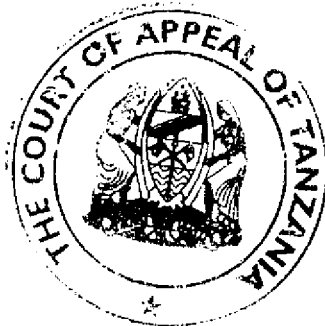
Thus, in view of the fact that there is an alleged illegality, I find it appropriate under the circumstances to allow the application on the basis of this point so that the issue may be considered. In the result, the

application is hereby granted. The applicant is given 30 days within which to file the application. I make no order as to costs.

**DATE at DAR ES SALAAM this 23<sup>rd</sup> day of February, 2023**

**P.F. KIHWELO**  
**JUSTICE OF APPEAL**

The ruling delivered this 24<sup>th</sup> day of February, 2023 in the presence of Mr. Stephen Masha learned counsel for the Applicant and Mr. Lusiu Peter, learned counsel for the Respondent, is hereby certified as a true copy of the original.



  
**F. A. MTARANIA**  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**