

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

**CIVIL APPLICATION NO. 250 OF 2016**

<b>1. M/S ILABILA INDUSTRIES LTD. 2. JOHN MOMOSE CHEYO 3. NGULA VITALIS CHEYO</b>	}	..... <b>APPLICANTS</b>
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**VERSUS**

**VICTORIA REAL ESTATE DEVELOPMENT LTD. .... RESPONDENT**

**(Application for extension of time to file a reply submission to the  
Respondent submission in Civil Revision No. 175 of 2015 from the  
decision of the High Court of Tanzania, at Dar es Salaam)**

**(Bukuku, J.)**

**Dated the 26<sup>th</sup> day of March, 2012  
in  
Commercial Case No. 27 of 2002**

**RULING**

24<sup>th</sup> October & 8<sup>th</sup> November, 2016

**LILA, J.A.:**

The applicant in the present application brought, by way of a notice of motion supported by an affidavit sworn by one Rita Chihoma, learned advocate for the applicant, an application seeking for extension of time to file a reply to the respondent's submissions in Civil Revision No. 175 of 2015. The main ground raised is that:-

*The information that the documents had been served, came very late to the knowledge of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> applicants and their advocates.*

When the application was called on for hearing Ms. Rita Chihoma, learned advocate, appeared for the applicants and also held brief of Mr. Juma Nassoro, learned advocate, for the respondent.

Ms. Rita Chihoma informed the Court that Mr. Juma Nassoro had asked her to inform the Court that he is sick hence could not enter appearance and further that he did not file a reply affidavit because he had no intention to contest the application.

Ms. Rita Chihoma urged the Court to waive filing of written submissions under Rule 106 (1) of the Court of Appeal Rules, 2009 because Mr. Juma Nassoro has no objection to the application being granted and this will accelerate dispensation of justice. She prayed for hearing of the application to proceed orally in the absence of written submission by both parties.

In respect of the application Ms. Rita Chihoma urged the Court to adopt the facts contained in the affidavit in support of the application as part of her submissions. She added that at the time the respondent filed

written submissions she was of ill health after she had met a car accident which caused her experience severe headache and had to be kept under medication. She said at the time she came to know that she was required to file reply submission it was already late. She further contended that the facts contained in the respondent's submissions filed in court in respect of Civil Revision No. 175 of 2015, as of necessity, requires reply submissions be filed. She accordingly prayed the application be granted and the applicant be granted extension of time within which to file reply submissions in respect of Civil Revision No. 175 of 2015.

Rule 106 (1) of the Court of Appeal Rules, 2009 (herein the Rules) mandatorily requires the applicant to file written submissions in support of the application within sixty (60) days after lodging the notice of motion. In the same vain, the respondent is, under Rule 106 (7) of the Rules, also required to file a copy of a reply to the submissions of the applicant not later than thirty (30) days from the date of service of the submissions by the applicant.

The legal consequences for failure by the applicant to file written submissions in support of the application within sixty days is that the Court can exercise the discretion of either dismissing the application or not.

In the instant application the applicant did not file written submissions in support of the application within the prescribed period of sixty days. The remedy would be as provided under Rule 106 (9) of the Rules. However, Ms. Rita Chihoma has urged the Court not to dismiss the application but rather waive the requirement to file written submissions and proceed with the hearing of the application orally.

Rule 106 (19) of the Rules vests the Court with discretionary powers of either to waive compliance with the requirement to file written submissions either wholly or in part or reduce the time limit specified in the rule where the Court considers that there are exceptional circumstances so as to do justice to the parties. This position was cemented in the case of **Merchmar Corporation (malaysia) Benhard vs VIP Engineering and Marketing Ltd**, Civil Application No. 9 of 2011 (CAT) Dsm Registry (unreported).

In the present application, as hinted above, Ms. Rita Chihoma has raised, as exceptional circumstance that the respondent has no intention to object to the application and by allowing her argue the application orally will accelerate dispensation of justice.

I have carefully considered the prayer to waive the requirement to file written submissions by Ms. Rita Chihoma. I am of a considered view that the circumstances obtaining in the present application are exceptional warranting waiver of filing written submissions. In the first place, the affidavit in support of the application vividly shows that the applicant duly filed written submissions in Civil Revision No. 175 of 2015. Secondly, and of important too, is that the respondent is not resisting the application. Allowing extension of time to the applicant to file reply submissions in Civil Revision No. 175 of 2015 will definitely expedite dispensation of justice. For these reasons, I hereby waive the requirement to file written submissions in support of the present application and hereby proceed to determine the application basing on oral submissions by Ms. Rita Chihoma.

Apparently, this application has been brought under Rule 10 of the Court of Appeal Rules. The issue for consideration in applications of this nature is whether the circumstances leading to the delay constitute sufficient or good reason within the provisions of Rule 10 of the Rules.

As indicated above the applicant's sole reason for delay in filing reply submissions in respect of Civil Revision No. 175 of 2015 is that the learned advocate met a car accident at the time she was required to file reply

submissions. She accordingly had to be subjected to the mediation hence time lapsed while not in office. Incidentally, the application is also not objected by the respondent.

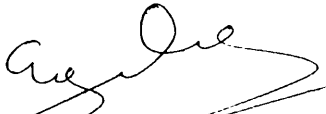
On my part, I find ill-health to be a good and sufficient reason for the delay. Worsly, it was a car accident which no one can plan. The delay was not inordinate.

In the circumstances, I grant the applicant's application. The applicant is hereby given fourteen (14) days from the date of delivery of this ruling within which to file reply submissions in respect of Civil Revision No. 175 of 2015. As the respondent did not resist the application, I make no order for costs.

**DATED at DAR ES SALAAM this 24<sup>th</sup> day of October, 2016.**

S. A. LILA  
**JUSTICE OF APPEAL**

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

  
E.Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**