

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

**CIVIL APPLICATION NO. 142 OF 2016**

**NATIONAL BANK OF COMMERCE LTD .....APPLICANT**  
**VERSUS**  
**1. GHUBAA OIL SUPPLIES LTD**  
**2. DADRAHMAN NOOR MOHAMED BAHRAM** .....RESPONDENTS  
**3. MEHRAN ABDUL NABIR**

**(Application for Extension of time to Serve Notice of Appeal  
from the High Court of Tanzania at Dar es Salaam)**

**(Mjemas, J.)**

**Dated 30<sup>th</sup> day of March, 2015**

**in**

**Land Appl No. 432 of 2015**

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**RULING**

28<sup>th</sup> June & 9<sup>th</sup> August, 2016

**ORIYO, J.A.:**

The applicant, National Bank of Commerce Ltd, is seeking an extension of time pursuant to Rule 10 of the Court Rules, within which to do the following:-

- (i) To serve the Notice of Appeal and the letter requesting copies of Proceedings, Ruling and Order on the respondents.
- (ii) For an order that such service be effected through substituted service by way of registered mail; on the

grounds that there is good cause which led to failure to serve the Respondents within the time stipulated under the law because;

1. The Respondents' whereabouts are unknown.
2. The Respondents' previous Advocate refused to accept service on ground that he was no longer representing the Respondents.

At the hearing of the application, the applicant bank was represented by Ms. Samah Salah learned counsel who had filed written submissions as well. However for the respondents, it was a no-show; neither by counsel nor by the parties. It was also of significance that there were no written submissions by the respondents filed earlier on, either. In the circumstances, the hearing had to **ex parte** in the absence of the respondents and/or their counsel.

The issue for consideration here is whether the applicant has demonstrated **good cause** for the delay to serve the notice of appeal and

the letter requesting copies of proceedings, ruling and order; and for an order that service be effected by substituted service.

It is now well settled in terms of **Rule 10** of the Court Rules, that a decision on whether or not to extend time is essentially discretionary, **upon good cause shown**. The matters which the Court ought to take into account in this respect include:- the **length** of delay, the **degree of prejudice** to the respondent, etc; See- **The Attorney General VS Twiga Paper Products Ltd**, Civil Application No. 108 of 2008 (unreported); **National Microfinance Bank VS Augustino Wesaka Gidimara t/a Builders, Paints and General Supplies**, Civil Application No. 154 of 2015 (unreported).

At the conclusion of the hearing on 28<sup>th</sup> June, 2016 the following order was issued:-

### **ORDER**

On the strength of the affidavital evidence of Samah Salah, learned counsel and Frida Mtunzi, legal clerk in the advocates' chambers; together with the lucid submissions by counsel, I am of the considered view that good cause

has been established; hence the application for extension of time is hereby granted.”

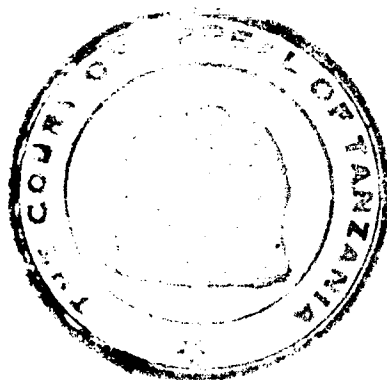
In the circumstances, the order of 28/6/ (supra) was sufficient evidence that I was inclined to go along with the reasons advanced for the delay, as good cause. In the result, time is hereby extended and the applicant is granted fourteen (14) days, from the date of delivery of the Ruling, to effect substituted service by way of registered mail on the respondents.

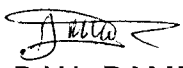
Costs shall be in the cause.

**DATED** at **DAR ES SALAAM** this 5<sup>th</sup> day of August, 2016.

K. K. ORIYO  
**JUSTICE OF APPEAL**

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



  
P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**