

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

**CIVIL APPLICATION NO. 63/01 OF 2017**

**COCACOLA KWANZA LTD ..... APPLICANT**

**VERSUS**

1. CHARLES MPUNGA
2. EMANUEL KAYALA
3. ELILVIS TESHA
4. CHRISTOFA MKINGA
5. BONN TADEUS
6. 5. WAYLES MSAGATI
7. MUHIDINI MJUKWA
8. 7. JOHN OKUNGU
9. JOHN MBAGA
10. YOHANA KAYALA
11. ABAS ALLY
12. ABDALA CHAMBALA
13. HAMAD SAIDI
14. AIZACK MICHAEL
15. SAIDI HAJI
16. HADSSANI NGAKINA
17. SALUM UPESI
18. KAIMA MCHUCHULI
19. SAID ISSA
20. FESTO MSUMARU
21. SHANI ALLY
22. YAHAYA ABDALA
23. MOHAMED JAFARI
24. JASEN BARABINGA
25. MANENO MILIMA
26. MOHAMEDI ABDALA
27. MATIASI SAMSON
28. SAIDI JUMA
29. MAHAMUDU RASHIDI
30. OMARY RAMADHANI

**..... RESPONDENTS**

31. **ABDALLAH SINGIRIMA**
32. **CHARLES WILSON**
33. **SULTAN ABDALA**
34. **SHABANI MTUNGUJA**
35. **HAMISI LUAMBO**
36. **SEFU NGWAYA**
37. **BAKARI MBWANA**
38. **ANISETI TARIMO**
39. **JUMA ALLY**
40. **BENARD LUKASS**
41. **OMARY SALUM**
42. **MUSSA HASSAN**
43. **ABDALLA MKWAMA**
44. **RAMADHANI GUMBO**
45. **RESHID GEMA**
46. **TWAHA HASHIM**
47. **GERADY NDEKANGO**
48. **EDUADY TESHA**
49. **MOHAMED SELEMAN**
50. **HOSENI NGAO**
51. **PITER PAULO**
52. **HASSA SEYVUNDE**
53. **MUSSAATHUMANI MRAGADI**
54. **KASIM ALLY**
55. **DAUDI MWASUKA**
56. **WILLY URASA**
57. **SADIKI RUPINDO**
58. **STANFODY KAYANGE**
59. **AMOSSY MZIZA**
60. **DAUDI ISSA**
61. **KASIM KUAKA**
62. **ABDALA MKUMBA**
63. **YUSUFU ABELY**
64. **MOHAMED KULUSUNGU**
65. **ISIHAK MOBISA**
66. **NELSON MACHIBWA**
67. **SADDI JUMA**
68. **STIVEN JAMES**

69. FREDU MASSU
70. EGYDY KWATAKWATA
71. LAURANCE MUNISI
72. TOBIASI ANTONI
73. EUSANTE PITER
74. RAMADHANI MWARAMI
75. HAMISI ALLY LILA
76. IDDI LUA
77. HASSAN OMARI
78. KESSY SULEMANI
79. ATHUMAN MISTRY
80. IDDI MOHAMEDI
81. JUMANNE NGUOGAN
82. CALESS MPUNGA
83. ALLY BASIOKE
84. KIFUA SALIM
85. ALLY HABIB
86. RENATUS HERY
87. MUSSA ALFANI
88. EMPHRANCIA M. REMICHO
89. MUSSA ATHUMAN
90. JOICE MMANGA
91. ERNEST KISONGA
92. ALLY HASSANI
93. FOKASI MLAGADI
94. ALMANUS KUTALIKA
95. MFAUME MNUNGU
96. ALEN MALONGO
97. JUSTIN KAMUNGU
98. RAJABU KUZIGA
99. WOLFAGAN HENJEWELE
100. NATHERN NONDE
101. STAMIUSI TAYARI
102. DASTANI PITER
103. HONEST MWAMHAVI
104. EDGA MROPE

**(Application for extension of time to apply for leave to appeal to the  
Court of appeal against the whole decision of the full bench of the  
High Court of Tanzania)**

**in  
Misc. Appeal No. 10 of 2008**

**(before their Lordships Justices Shangwa, J., Wambura, J. and  
Mgaya, J.)**

**dated 25 day of October, 2010**

**after leave was denied by the High Court of Tanzania  
in**

**Misc. Application No. 10 of 2010**

**(before Mushi, J.)**

**dated 30<sup>th</sup> day of October, 2012**

.....

**RULING**

18<sup>th</sup> & 24<sup>th</sup> August, 2017

**MBAROUK, J.A.:**

The applicant COCACOLA KWANZA LTD, by way of a notice of motion made under Rules, 10,45 (b), 48(1) and (2) of the Court of Appeal Rules, 2009, seeks for an order that extension of time to file an application for LEAVE to appeal against the judgment and orders of the High Court of Tanzania before Shangwa, J.,

Wambura, J. and Mgaya, J. dated 25/10/2010 after leave was denied by the High Court of Tanzania in Misc. Application No. 10 of 2010 before Mushi, J. dated 30/10/2012 and after Application for leave No. 107 of 2015 was struck out by the Court of Appeal on 10<sup>th</sup> October, 2016 for lack of names of other Respondents apart from Charles Mpunga, be granted for the following ground:-

*"That the judgment of the full bench of the High Court is tainted with illegality as it did not take into account that the award of the full bench of the Industrial court dated 7/11/2008 in application for Revision No. 23 of 2007 which partly upheld the award of the Industrial Court in Enquiry No. 04 of 2004 dated 01/8/2007 were both procured illegally after taking into consideration a sworn written statement of evidence which did not form part of*

*the Respondent's evidence as it was withdrawn by  
the Respondents before cross examination."*

The application was supported by the affidavit of Erick George Ongara, employed by the applicant as Country Human Resources Manager, hence well conversant with the facts deposed in the affidavit.

The genesis of this application originated from an employment dispute in retrenchment held on 30/8/2003. The respondents were not happy with applicant arrangements as such they filed an industrial Dispute Enquiry No. 4 of 2004 (defunct Industrial Court of Tanzania). Hon. Mipawa, J. by then Deputy Chairman awarded each respondent 24 months salaries. The applicant dissatisfied, hence filed Revision No. 23 of 2007 which reduced the award of 24 months salaries to 12 months salaries. Still aggrieved, the applicant unsuccessfully appealed to the full bench of the High Court in Misc. Appeal No. 10 of 2008.

Undaunted, the applicant further wants to appeal to this Court. As much as her appeal is concerned, before this Court, it lies with leave. On 5<sup>th</sup> May, 2015 this Court Hon. Kimaro, J. granted him extension of time to file leave to appeal, however subsequently, her application for leave to appeal was struck out on 10<sup>th</sup> October, 2016, because she failed to exhibit names of all the respondents. She once tried to apply for leave to appeal to this Court but denied before the High Court

On 12<sup>th</sup> October, 2016 the applicant wrote a letter to the High Court Labour Division requesting to be availed with all names of respondents. Those names were supplied to the applicant on 30<sup>th</sup> January, 2017. On 16<sup>th</sup> February, 2017, the applicant lodged this application. Essentially, the above facts shows what transpired prior to this application.

In this application, Mr. Arbogast Mseke, learned advocate appeared for the applicant whereas Mr. Mashiku Sabasaba, learned advocate appeared for all one hundred and four (104) respondents.

When the application was called on for hearing, Mr. Arbogast prayed to adopt to what has been submitted in the affidavit of Erick Ongara in support of the application as part of his submissions. He basically started by giving a historical background of the events which gave rise to this application. He then relied on paragraphs 16, 17 and 18 of the affidavit sworn by Erick Ongara which read as follows:-

*"16. That on 10<sup>th</sup> October, 2016, when the Application No. 107 of 2015 came for hearing, the matter was struck out for lack of names of the other respondents apart from Charles Mpunga.*

*17. That as the Applicant was still*



*determined to apply for leave to appeal but still had not the names of the Respondents, on 12<sup>th</sup> October, 2016, the Applicant requested the labor court to avail him with the names of the Respondents, however regardless of several follow-ups he was not availed with the names timely until 30<sup>th</sup> January, 2017 when he was availed with names of the Respondents.*

*18. That applicant is still desired to appeal to the Court of appeal on grounds stated in the notice of motion hence this application for enlargement of time to file application for determination by the Court of Appeal as per the notice of motion.”*

As demonstrated in those three paragraphs of the affidavit in support of the application, Mr. Arbogast prayed for their application to be granted as they have shown good cause for the delay.

On the outset, Mr. Sabasaba opposed the application, because, he said, the applicant has only shown the reasons for delay in the last part after this Court (Kimaro, J.A. as she then was) struck out its application for lack of other names of the respondents apart from that of Charles Mpunga. He simply prayed for this application to be looked at in its broader terms as it started from the High Court when its application for leave to appeal was denied. For that reason, Mr. Sabasaba prayed for this application to be dismissed as no good cause for delay was shown.

In his rejoinder submissions Mr. Arbogast reiterated his earlier submission and further prayed for justice to prevail considering the fact that they have always been in court corridors since when they were aggrieved by the decision of the Industrial

Court. He therefore prayed for extension of time to file an application for leave to appeal to this Court be granted as prayed.

Rule 10 of the Court of Appeal Rules, 2009 (the Rules) under which this application was made, provides as follows:-

*"The Court may upon good cause shown, extend time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as reference to that time as so extended."*

What constitutes good cause cannot be laid down by any hard and fast rules. This depends on the prevailing circumstances of each particular case. It is upon the party to provide the relevant material in order for the Court to exercise its discretion – See **Ratnam v.**

**Cumarasamy and Another**, (1964) 3 ALL ER 933 where Lord

Guest stated as under:-

*"The rules of court must, prima facie, be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise discretion. If the law were otherwise, a party in breach would have unqualified right to an extension of time which would defeat the purpose of the rules which is to provide for a time table for the conduct of litigation."*

In the case of **SHANTI V. HINDOCHA & OTHERS** (1973) EA 207 the then Court of Appeal for East Africa had this to say at page 209-

*"The position of an application for extension of time is entirely different from that of an application*

*for leave to appeal. He is concerned with showing "sufficient reason" why he should be given more time and the most persuasive reason he can show ..... is that the delay has not been caused or contributed to by dilatory conduct on his part. But there may be other reasons and these are all matters of degree. He does not necessarily have to show that his appeal has a reasonable prospect of success or even that he has an arguable case."*

Reasons for extension of time in this application, are stated in paragraphs 16 to 18 of Erick George Ongara as pointed herein above, but material for this application may be fetched under paragraph 17 of the applicant's affidavit, that the delay was caused by High Court Labour Division by failure to handle him names of the respondents timely. From above observation, it is evident in my view that the applicant has been in Court immediately from a

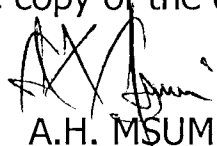
time when she lost her case. Since the applicant has shown meticulousness in pursuing his appeal, I am of the view that the applicant's prayer be granted.

In final analysis, I am of the view that the applicant has shown good cause to exercise my discretion conferred upon me under Rule 10 of the Rules so as to grant her an extension of time. For that reason, the applicant is hereby granted extension of time as prayed, she is supposed to file her application for leave within fourteen (14) days from the date of the delivery of this Ruling. It is so ordered.

**DATED** at **DAR ES SALAAM** this 21<sup>st</sup> day of August, 2017.

M.S. MBAROUK  
**JUSTICE OF APPEAL**

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



A.H. MSUMI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**

