

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 150/20 OF 2017

DTP TERRASSMENT.....APPLICANT

VERSUS

THE COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY.....RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals
Tribunal at Dar es Salaam)

(Shangwa, J.)

dated the 24th day of June, 2008

in

Appeal No. 20 of 2007

RULING

1st & 9th November, 2017

MUGASHA, J.A.:

The applicant, DTP TERRASSMENT has brought this application seeking extension of time to file documents omitted from record of appeal. The application is by way of notice of motion brought under Rules 10 and 96(6) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The main ground upon which the application is sought is that: the applicant was belatedly supplied with a valid decree and the exhibits produced before the Tax Revenue Appeals Board (the Board). As a result, the applicant delayed

to include them in the record of appeal within 14 days after filing the appeal.

The application is supported by the affidavit of **WILSON KAMUGISHA MUKEBEZI** an advocate with Ako Law, a Firm duly instructed to represent the applicant. In his affidavit, he has deposed that, the applicant's initial appeal was struck out because it was not accompanied by the valid decree and the exhibits. He averred that, the applicant filed the notice of appeal on 16/3/2016 after obtaining extension of time and also wrote a letter to the Board seeking to be supplied with the said documents. The applicant obtained a certificate of delay excluding the period from 11/3/2016 to 23/12/2016. Being apprehensive of the expiry of the timelines within which to file an appeal, the applicant lodged the appeal on 20/2/2017 without the documents in question which were supplied on 20/3/2016. This was after expiry of 14 days within which those documents could have been included in the record of appeal without obtaining leave of the Court. This made the applicant to bring the present motion on 20/3/2017 within a week after being supplied with the requisite documents.

The motion is unopposed since the respondent did not file any affidavit in reply. To buttress the motion, the applicant filed written submissions in terms of Rule 106 (1) of the Rules.

At the hearing of the application, Dr. Ong'hwamuhana Kibuta assisted by Advocates Mr. Allan Kileo, Mr. Wilson Mukebezi and Mr. Nobert Mwaifani represented the applicant. The respondent had the services of Mr. Marcel Busegano learned counsel.

Dr. Kibuta adopted the notice of motion, the affidavit and the applicant's written submissions to constitute integral part of his submission at the hearing of the application. In the written submissions, basically the applicant amplified what is contained in the affidavit in support of the application. In addition, it was submitted that, having realized about the missing opinion of the members of the Tax Revenue Appeals Tribunal (the Tribunal), the applicant as well, requested to be supplied with the same by the Registrar of the Tribunal. It was further submitted that, despite the applicant's constant follow up at the Board and the Tribunal, the documents in question were belatedly supplied which made it impossible for the applicant to include them in the record of appeal within prescribed time. As such, it was argued that, the applicant has demonstrated

sufficient cause for the delay to include the omitted documents in the record of appeal within prescribed time. To support this proposition, the applicant relied on the case of YUSUFU SAME AND ANOTHER VS HADIJA YUSUFU, Civil Appeal No. 1 of 2002 (unreported). In that case, the Court observed that, sufficient cause should be widely interpreted to encompass all reasons and causes which are beyond applicant's power to control or influence resulting delay in taking any steps.

After a careful consideration of the arguments in support of the application, the issue for determination is whether the applicant has demonstrated sufficient for the delay warranting the Court to exercise its judicial discretion under Rule 10 of the Rules which provides:

"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 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 a reference to that time so extended."

The discretion of the Court to extend time under the cited Rule is unfettered, but in considering an application under Rule 10, the Court may take into consideration, such factors including the length of delay and the reason for the delay. [(See the case of **HENRY MUYAGA Vs. TTCL** Application No. 8 of 2011 (unreported)].

In considering what amounts to sufficient cause, factors to be taken into account include: whether or not the application has been brought promptly; the absence of any valid explanation for delay and lack of diligence on the part of the applicant. (See the case of **TANGA CEMENT COMPANY LIMITED v JUMANNE D. MASSANGA AND AMOS A. MWALWANDA CIVIL APPLICATION NO. 6 OF 2001** (unreported)).

According to rule 96(1) (d), (h) and (k) of the Rules, exhibits which constitute part of the proceedings, a valid decree and opinion of assessors constituting documents necessary for the proper determination of the appeal, are amongst vital documents which must be in the record of appeal or else the appeal will be rendered incomplete.

In the present application, the applicant on 21/9/2016 sought to be supplied with the said documents but was belatedly supplied on 16/3/2017

by the Tribunal's Registrar. As such, it was beyond the applicant's control to have those documents incorporated be it at the time of filing an appeal on 20/2/2017 or thereafter, before the expiry of 14 days after the appeal was filed. In this regard, it can safely be vouched that, it was beyond the applicant's capability to invoke Rule 96 (6) of the Rules to include the said documents within the prescribed 14 days after the appeal was filed. Besides, the applicant promptly filed the present application in less than a week being after supplied with the said documents by the Tribunal's Registrar. This in entirety exhibits a valid explanation for delay and constitutes sufficient cause according to what we said in the case of **TANGA CEMENT COMPANY LIMITED v JUMANNE D. MASSANGA AND AMOS A. MWALWANDA** (supra). [Also, having considered the sequence of events, it is apparent that the delay was occasioned by both the Board and the Tribunal having belatedly supplied the requisite documents despite applicant's constant follow up. In a nutshell, what caused the applicant's delay was beyond her power and control to take necessary steps as we said in **YUSUFU SAME AND ANOTHER VS HADIJA YUSUFU** (supra).

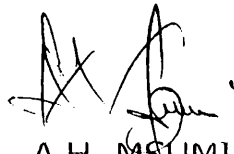
In view of the aforesaid reasons, I am satisfied that, the applicant has advanced reasons for the delay which I consider as good cause in

terms of rule 10 of the Rules. Thus, I hereby grant the application whereby the applicant should include the said documents omitted in the record of appeal not later than twenty one (21) days from the date of this Ruling. Costs be in the event.

DATED at DAR ES SALAAM this 7th day of November, 2017.

S.E.A. MUGASHA
JUSTICE OF APPEAL

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



A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL