

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**CIVIL APPLICATION NO. 483/20 OF 2017**

**KCB BANK TANZANIA LIMITED ..... APPLICANT**

**VERSUS**

**COMMISSIONER GENERAL (TRA) ..... RESPONDENT**

**(Application for extension of time to file an application for stay of execution  
from the Decree and Judgment of the Tax Revenue Appeals Tribunal  
at Dar es Salaam)**

**(Twaib, J. Chairman, J.K. Bundala, D. Mwaibula, Tribunal Members)**

dated the 20<sup>th</sup> day of July, 2017  
in  
**Tax Appeal No. 28 of 2015**

.....

**RULING**

16<sup>th</sup> July, & 13<sup>th</sup> August, 2018.

**WAMBALI, J.A.:**

The applicant, KCB Tanzania Limited has approached the Court in an application seeking extension of time within which to lodge an application for stay of execution against the judgment and decree of the Tax Appeals Tribunal. The decision in Tax Appeal No. 28 of 2015 was delivered on 20<sup>th</sup> July, 2017 at Dar es Salaam in favour of the respondent, Commissioner General of the Tanzania Revenue Authority.

This application therefore has been filed pending the intended appeal to the Court of Appeal. The applicant duly lodged the notice of motion supported by the affidavit of Mr. Damas Gabriel Mwangange, a Principal Officer of the applicant.

It is on record that the applicant sought and obtained the services of M/S K & M (Advocates) of Dar es Salaam.

The applicant through the service of the advocate also lodged written submission in support of the application for extension of time and the list of authorities to be relied upon at the hearing.

The application is premised on the following grounds:-

- "(a) That the notice of Appeal has been filed on 31<sup>st</sup> July, 2017.*
- (b) That the Applicant is late in filling the application for stay of execution owing to the failure to obtain the Decree and the Judgment.*
- (c) That if execution by the Respondent ensures, the applicant will suffer substantial loss.*

*(d) That the Applicant has not set on its intended appeal rather has been making diligent compliances and/or follow-up of the necessary documents at the Tax Revenue Appeals Tribunal.”*

The applicant also outlines on ground (e) some issues with the view to show how the appeal has merits if the intended appeal is lodged.

The respondent through the service of Ms Gloria Achimpota, learned advocate lodged an affidavit in reply as required under Rule 52 of the Tanzania Court of Appeal Rules, 2009 (as amended) and seriously opposed the grant of the application. To cement the affidavit in reply, the respondent through the service of the said advocate lodged the written submission and urged the Court to dismiss with costs the application for extension of time.

The respondent however did not lodge a list of authorities to be relied upon at the hearing of the application.

At the hearing of the application, Mr. Seni Malimi, learned advocate appeared for the applicant while Ms Gloria Achimpota, learned advocate appeared for the respondent. However, before the advocate for the

applicant addressed the Court, Ms Achimpota rose and informed the court that despite the fact that an affidavit in reply and written submission opposing the application were lodged, on further reflection, the respondent did not oppose the same. She thus urged the court to grant the application for extension of time as prayed by the applicant.

When the learned advocate for the respondent was urged to state the reasons for not opposing the application, she stated that she took notice of the ruling of the Court of Appeal (Hon. Mwarija, J.A.) delivered on 14/6/2018 in **Karibu Textile Mills Limited v. Commissioner General (TRA)**, Civil Application No. 417/20 of 2017 (unreported) in which the circumstances resembled the present application. It is unfortunate that the learned advocate for the respondent, with due respect, did not tell the court the substance of what the Court had decided in that matter as she conceded that she had not read the full ruling save for a paragraph of the same which was availed to her by a colleague through a whatsapp message. Unfortunately too, she did not disclose the substance of the contents of the said paragraph.

Be that as it may, the learned advocate for the applicant thanked the learned advocate for the respondent for not opposing the application and urged the court to grant the application with no order as to costs.

On my part, I ~~must~~ state that I have, in the first place, gone through the ruling of this court in Civil Application No. 417/20 of 2017 (supra), and I have no hesitation to state that to a great extent the facts and the materials and reasons relied by the Court in granting the application for extension of time in that application are not similar to the facts and circumstances obtaining in this application. With greatest respect to the learned advocate for the respondent, I do not think she assisted the court to decide the matter based on the ruling of the court without further explanation on the content and substance.

It is my considered opinion that at this juncture it is not appropriate for me to discuss the contents of the said ruling as neither the counsel for the parties nor the court had ample opportunity to have an appreciation of the facts and the substance of the ruling at the hearing of the application as stated above. Therefore, the said ruling cannot be relied upon in deciding the present application.

Nevertheless, it is important to state that, it is prudent for an advocate or a party who wishes to rely on any decision of this court or other courts, as the case may be, to strive, for the sake of propriety and consistence, to fully disclose the substance of the fact, what was decided and how the said decision can be helpful or distinguishable in support or against the submission he makes to convince the court to decide the matter before it fairly.

In the event, as extension of time is granted at the discretion of the court, it is now for me to consider whether the reasons advanced by the applicant for the delay in lodging the application for stay of execution are sufficient to warrant the Court to extend time accordingly. It is evident as per paragraphs 8 to 12 of the affidavit in support of the application that the delay was out of control of the applicant. I have gone through paragraphs 8 to 12 of the affidavit of Mr. Damas Gabriel Mwangange, a Principle Officer of the applicant and the lengthy written submission and authorities in support of the application lodged by the advocate for the applicant, especially on the delay of being supplied with the requisite documents from the Tribunal, and I am of the considered opinion that the same deserves

consideration by the court. The explanation of the applicant is sufficient cause to convince the court to grant the application for extension of time.

In the circumstance, as the respondent at the hearing did not oppose the prayers of the applicant, the application for extension of time within which to lodge an application for stay of execution is granted.

The applicant is ordered to lodge the requisite application within fourteen (14) days from the date of the delivery of the ruling.

It is further ordered that each party shall bear own costs pertaining to the application.

**DATED at DAR ES SALAAM** this 9<sup>th</sup> day of August, 2018

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

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



*S. J. Kainda*  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**