

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

CIVIL APPLICATION NO. 287/20/2017

GEITA GOLD MINING LIMITED APPLICANT

VERSUS

COMMISSIONER GENERAL (TRA) RESPONDENT

**(Application from the judgment and Decree of the Tax Revenue Appeals
Tribunal at Dar es Salaam)**

(Twaibu J.)

Dated the 30th day of June, 2016

In

Tax Appeal No. 20 of 2014

RULING

8th & 29th May, 2018

MWARIJA, J.A.

The applicant, Geita Gold Mining Limited filed this application praying for the following order:-

*"The Honourable Court be pleased to grant leave [to]
the Applicant to file a Supplementary record of appeal
out of time...."*

This application was brought under Rules 10 and 96(6) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by the affidavit of Wilson Kamugisha Mukebezi, Advocate.

At the hearing, the applicant was represented by Mr. Alan Kileo, learned counsel whereas the respondent had the services of Mr. Noah Tito, learned counsel.

Mr. Kileo, who had earlier on 4/9/2017 filed his written submission in support of the application, adopted the submission together with the affidavit filed in support of the notice of motion. From the affidavit and the written submission, on 28/4/2017, the applicant instituted Civil Appeal No. 102 of 2017 (the Appeal) against the decision of the Tax Revenue Appeals Tribunal in Tax Appeal No. 20 of 2014. The impugned decision arose from the decision of the Tax Revenue Appeals Board (the Board) in Tax Appeals Nos. 12 and 13 of 2012.

At the time of filing the Appeal in the Court however, the applicant did not include in the record of the Appeal, the decree issued by the Board as well as the tendered exhibits (the Documents). Since the Documents are essential for appeal, the applicant preferred this application seeking extension of time to include them in the record of Appeal.

With regard to the cause for the delay, Mr. Kileo argued that, in the course of preparing the record of the Appeal, the applicant realized that the Documents were missing from the list of the copies which were

supplied by the Board. As a result, by the letter dated 20/3/2017, the applicant's advocate applied for the Documents from the Secretary of the Board. According to the learned counsel however, until the period of limitation for filing the Appeal was about to expire, the applicant had not been supplied with the Documents and thus necessitated the filing of the application. Mr. Kileo added that in the circumstances, the applicant could not invoke Rule 96 (6) of the Rules to include the Documents without leave of the Court because, that ought to have been done within 14 days from the date of filing the record of the Appeal.

In paragraph 8 of the supporting affidavit it is stated as follow:-

.. Until now the Applicant has not been supplied with the copies of decree and exhibits tendered at the board.'

When he was asked by the Court about the propriety or otherwise of applying for an order granting extension of time to file a supplementary record while the Documents are not yet in the applicant's possession, Mr. Kileo appreciated the difficulty as regards effectiveness of the sought order in case the extended period expires before the applicant obtains the Documents. He submitted however, that the applicant will make a follow up with the Secretary of the Board so that

the Documents are promptly obtained. The learned counsel prayed to be granted a period of 30 days from the date of the ruling and that such period will suffice to enable the applicant to file the intended supplementary record of appeal.

The respondent, Commissioner General, Tanzania Revenue Authority, did neither file an affidavit in reply nor a reply to the written submission of the applicant. Furthermore, during the hearing, Mr. Tito did not oppose the application. He agreed however, that since the applicant has not yet received the Documents from the Board, the period of extension which may be granted by the Court may expire before the Documents are obtained and for that reason, a problem may arise as regards the effectiveness of the order.

I have duly considered the submission made in support of the application which, as stated above, was not opposed by the respondent. It is not in dispute that the applicant applied for the Documents on 20/3/2017 for the purpose of including them in the record of appeal. This was before 28/3/2017 when the Appeal was filed. The delay in including the Documents in the record of the Appeal was therefore, due to a sufficient cause; that despite having applied for the same, the Board did not supply them to the applicant.


As agreed by both learned counsel, the only problem is appropriateness or otherwise of the applicant's act of applying for extension of time to include in the record of the Appeal, the Documents which have yet been supplied to it. This is because, the Court cannot grant the applicant an indefinite time. It must be a specific period within which the intended supplementary record of appeal has to be filed. Mr. Kileo submitted however, that a period of 30 days will be sufficient to enable him to obtain the Documents and file the intended supplementary record of appeal. In the circumstances, it is apposite to base the extension of time on the period sought by the learned counsel for the applicant.

On the basis of the foregoing, the application for extension of time to file a supplementary record of appeal is hereby granted. The same to be filed within 30 days from the date of delivery of this ruling.

DATED at DAR ES SALAAM this 25th day of May, 2018.

A. G. MWARIJA
JUSTICE OF APPEAL

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


E. Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL