

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

**CIVIL APPLICATION NO. 156/20 OF 2018**

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

**VERSUS**

**THE COMMISSIONER GENERAL**

**TANZANIA REVENUE AUTHORITY ..... RESPONDENT**

**(Application for extension of time to lodge written submission from the  
decision of the High Court of Tanzania at Dar Es Salaam)**

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

dated the 20<sup>th</sup> day of July, 2017  
in  
**Civil Appeal No. 19 of 2018**

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**RULING**

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

**WAMBALI, J.A.:**

The applicant was the appellant in Tax Appeal No. 20 of 2015 that was before the Tax Revenue Appeals Tribunal. The Tribunal dismissed the appeal in a judgment that was delivered on 20<sup>th</sup> July 2017 at Dar es Salaam. The appellant therefore lodged before this Court, Civil Appeal No. 19 of 2018 to challenge the judgment and decree. After the appeal was lodged, the appellant was under obligation to lodge written submission in support of the same.

According to the record, the written submission was due for filing on 2<sup>nd</sup> April 2018. However nothing was lodged in court on the said date. This application therefore arises from Civil Appeal No. 19 of 2018 in which the applicant seeks extension of time within which to lodge the written submission in support of the appeal as per Rule 106 (1) of the Tanzania Court of Appeal Rules, 2009 (as amended).

The application which is by notice of motion is supported by the affidavit of Ms. Anita Kimaro, the learned advocate for the applicant who was assigned to prepare and lodge the submission in support of the appeal. The record also bears the testimony that the applicant through the service of Mr. Gaudiosus Ishengoma, learned advocate lodged written submission in support of the application.

On the other hand, as required by Rule 34(1) of the Tanzania Court of Appeal Rules, 2009 (as amended), the applicant lodged a list of authorities to be relied upon in support of the application at the hearing.

It cannot be doubted as per the record, that the respondent, the Commissioner General of Tanzania Revenue Authority did not lodge an affidavit in reply in response to the application.

When the application was called on for hearing, Mr. Ishengoma learned advocate appeared for the applicant while Ms. Gloria Achimpota learned advocate appeared for the respondent.

As the ~~advocate~~ for the applicant was about to address the Court, the learned advocate for the respondent, sought leave to address the court. She was accordingly granted the requisite leave. Ms. Achimpota quickly and briefly conceded that the respondent did not lodge an affidavit in reply. She thus submitted that the respondent did not intend to contest the application for extension of time within which to lodge the written submission in support of the appeal. She therefore urged the Court to grant the application as prayed by the applicant. Nevertheless, she prayed that no order for costs should be ordered against the respondent.

Mr. Ishengoma learned advocate for the applicant in response submitted that the court may be pleased to grant the application as extension is granted at the discretion of the court despite the fact that the respondent had no objection. He thus urged the Court to adopt the affidavit and the written submission in support of the

application to enable it to reach a fair decision. He finally stated that the applicant did not intend to pray for costs against the respondent.

In this application, the applicant has advanced two grounds for seeking extension of time:-

*"(a) The applicant could not lodge its submission on time as Anita Kimario who was assigned to prepare and lodge the same had to travel to attend to her uncle who had a medical emergency outside Tanzania.*

*(b) That there are serious issues pertaining to tax laws in Tanzania and the legality of imposition of such tax laws especially on the treatment of bad debts which the applicant seeks the intervention of the Court of Appeal."*

In ground (a) above, Ms. Anita Kimario in paragraphs 6 and 7 of the affidavit states that after she had almost finalised preparing the submissions and the list of authorities on 23<sup>rd</sup> March, 2018 when she received a phone call that informed her that her uncle Deo Kimario who raised and mentored her was critically ill and hospitalized at Premier Hospital in Mombasa, Kenya. She thus sought permission to travel which was granted by the authorities as

shown by annexure FB Attorneys to the affidavit. She thus traveled to Mombasa Kenya and was compelled to be there until 19<sup>th</sup> April 2018 when her cousin took over the care of her uncle who was still in hospital and returned to Dar es Salaam.

She further stated that when she entered in the office on 23<sup>rd</sup> April, 2018, she realised that the written submission had not been filed and she therefore took actions and lodged the current application on 30<sup>th</sup> April 2018. Ms. Kimario therefore emphasized that the delay in lodging the written submission was not due to negligence of the applicant and the advocate as the same was to due to unavoidable reason. She therefore requested the court to find the said reason sufficient to enable it to extend time.

It is settled that extension of time is granted upon sufficient cause being demonstrated by the applicant. However the term sufficient cause depends on consideration of several factors, some of which revolve around the nature of actions taken by the applicant immediately before or after discovering that the delay is imminent or might occur. In the present matter, it is my considered opinion that the first reason explained by the advocate for the applicant who was

assigned to prepare and lodge the written submission is sufficient cause to be considered in granting extension of time. I do not think, therefore, that in the circumstance of this matter and at this stage in which the appeal is pending in court, it is prudent for me to consider ground (b) on illegality.

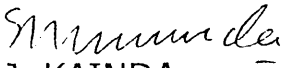
In the circumstances, as the respondent also has no objection to the prayer for extension of time sought by the applicant, the same is granted. The applicant is ordered to lodge written submission within fourteen days (14) from the date of delivery of this ruling. No order as to cost is made.

It is so ordered.

**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  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**