

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

**(CORAM: JUMA, CJ., MUGASHA, J.A., And LEVIRA, J.A.)**

**CIVIL REFERENCE NO. 7 OF 2018**

**BG INTERNATIONAL LIMITED..... APPLICANT**

**VERSUS**

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

**(Reference from the decision of the single Justice of the Court of Appeal of  
Tanzania at Dar-es-Salaam)**

**(Mwangesi, J.A.)**

**dated the 12<sup>th</sup> day of June, 2018**

**in**

**Civil Application No. 516/20 of 2017**

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**RULING OF THE COURT**

9<sup>th</sup> & 11<sup>th</sup> June, 2020

**MUGASHA, J.A.:**

This is an application for reference which has been brought under Rule 62 (1) (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules) emanating from the Ruling of a learned single Justice (Mwangesi, J.A.) in Civil Application No. 516/20 of 2017. The applicant lodged the said application seeking extension of time within which to include some omitted

documents in the record of appeal. Having heard the parties, the learned single Justice dismissed the application.

Before dwelling on the application, we have found it crucial to narrate a brief background of what underlies this reference as follows: Following the conduct of audit by the respondent on the applicant's business for the purposes of knowing the tax liability of the applicant, the audit findings uncovered that it has underpaid various taxes. The respondent communicated the preliminary findings that the applicant had underpaid some taxes. The applicant unsuccessfully objected the assessment but the respondent maintained that, the applicant was obliged to pay the underpaid taxes together with interest. Discontented, the applicant lodged an appeal to the Tax Revenue Appeals Board (The Board) where the appeal was dismissed. Then, the applicant unsuccessfully appealed to the Tax Revenue Appeals Tribunal (the Tribunal) and the appeal was dismissed in a decision handed down on 2/5/2017.

Desirous of lodging an appeal to the Court, on 11/5/2017, the applicant lodged a notice of appeal and on the same day, wrote a letter to the Registrar of the Tribunal requesting to be supplied with copies of the

proceedings, judgment and decree. The requisite documents were supplied to the applicant on 4/7/2017 and the applicant proceeded to request the certificate of delay which was availed on 10/7/2017. Since the sixty days' time limit within which to file an appeal were to expire on 3/9/2017 while the applicant was yet to be supplied with the exhibits which were adduced into the evidence before the Board, the applicant opted to lodge an appeal hoping that the exhibits would be availed before the expiry of fourteen (14) days during which the applicant could have lodged the omitted documents without obtaining leave of the Court. However, that was not the case because after the expiry of fourteen (14) days the applicant was yet to be availed with the documents in question. This is what precipitated an application for extension of time before the learned single Justice in order to include the omitted documents in the record of appeal.

We have noted that, before the learned single Justice the applicant did not wish to pursue the second limb of the grounds of motion which is to the effect that, in the record of appeal, the applicant's letter requesting to be supplied with proceedings was also omitted.

After the learned single Justice heard arguments canvassed by Mr. Wilson Kamugisha learned counsel for the applicant and Mr. Marcel Busegano for the respondent, in dismissing the application, he was fully convinced that, since the decision which is sought to be appealed against was handed down on 2/5/2017, the request to be supplied with endorsed exhibits ought to have been made not later than thirty (30) days of the decision. As such, the applicant was legally obliged to initially apply to the Tribunal extension of time to request the endorsed exhibits before coming to Court to seek extension of time to include the omitted documents in the record of appeal.

The decision of the learned single Justice prompted the present application for reference whereby the applicant is praying for reversal of the decision of the single Justice upon the following seven grounds:

- 1. The honourable single justice erred in law in applying the requirement provided in Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 for refusing to grant leave for the applicant to lodge a supplementary record in order to include endorsed exhibits requested from the Tax Revenue Appeals*

*Board because such Rule applies to proceedings requested from the High Court or Tribunals only.*

- 2. The honourable single justice misapplied the principle pronounced by the Court in Geita Gold Mine Limited vs Commissioner General Tanzania Revenue Authority, Civil Appeal No, 39 of 2017 hence reaching a wrong conclusion.*
- 3. The honourable single justice erred in law and fact in misconceiving the fact that the office of the registrar of the Tax Revenue Tribunal and the office of the secretary to the Tax Revenue Appeals Board are different offices regulated by different sets of regulations and that the Court of Appeal rules do not apply to the office of the Tax Revenue Appeals Board.*
- 4. The honourable single justice erred in law in holding that imposing a thirty days' time provided in Rule 90 (1) of the Tanzania Court of Appeal Rules applies to requests made to the Secretary to the Tax Revenue Appeals Board.*
- 5. The honourable single justice erred in law in ignoring the principles pronounced by this Court that the remedy available when one omits to*

*include missing documents in the record of appeal within fourteen days stipulated in Rule 96 (6) of the Tanzania Court of Appeal Rules is to seek leave of the Court in order to include the omitted document.*

*6. That in terms of the endorsed copies of the exhibits tendered before the Tax Revenue Appeals Board are not mandatory documents that must be included to the statement of appeal which is filed to the Tax Revenue Appeals Tribunal and there is no time limit stipulated requesting them.*

*7. The honourable single justice of appeal erred in holding that the applicant was legally obligated to apply to the Tribunal for extension of time to request for her exhibits first before coming to this Court.*

The reference is accompanied by the affidavit of Mr. Wilson Kamugisha Mukebezi which echoes what is contained in the grounds of motion. It has been opposed by the respondent through the affidavit in reply of Gloria Achimpota, respondent's counsel.

At the hearing, the applicant was represented by Messrs. John Kamugisha and William Mlange'nya, learned counsel whereas the

respondent had the services of Ms. Alicia Mbuya, learned Principal State Attorney and learned counsel from the respondent namely; Ms. Gloria Achimpota, Ms. Juliana Ezekiel and Mr. Hospis Mwasanyia.

The parties filed written submissions containing arguments for and against the application which they adopted to constitute an integral part at the hearing.

Mr. Kamugisha submitted that, the learned single Justice did not consider that the applicant had taken all essential steps and was diligent in ensuring that the record of appeal filed contains all the necessary documents. He submitted that, the learned single Justice wrongly invoked rule 90 (1) of the Rules which require the intending appellant to request to be supplied with proceedings, judgment and decree within thirty (30) days of the decision. He argued that while the said Rule is applicable to the High Court and the Tribunal, it is not applicable to the Secretary of the Board who apart from not being a registrar, is not obliged to prepare a record of proceedings from appeals heard and determined by the Tribunal. Besides, it was submitted that there is no fixed time frame within which the documents may be requested from the Board considering that, the

applicant had already filed an appeal after obtaining the certificate of delay.

Mr. Kamugisha who opted not to submit on the 3<sup>rd</sup> and 6<sup>th</sup> grounds of reference, concluded by urging the Court to reverse the decision of the learned single Justice and grant the extension of time to lodge the omitted record of appeal. In the alternative, Mr. Kamugisha submitted that, in the wake of the amended Rule 96 (7) which mandates the Court to grant the appellant leave to file the omitted documents in the record of appeal, he urged the Court to consider the same and give a direction to enable the applicant to invoke the Rule at the hearing of the appeal.

Ms. Achimpota's response was to the effect that, before the learned single Justice the applicant failed to adduce good reasons to warrant enlargement of time to file the omitted documents due to the alleged inaction of the Board. She argued that, the application was declined because the applicant had applied for endorsement of the exhibits by the Board after being furnished with the certificate of delay which would have enabled the applicant to account for the delay. She added that, it was improper for the applicant to seek the omitted documents from the Board



instead of reverting to the Tribunal where it had initially written a letter requesting to be supplied with proceedings, judgment and decree for the purposes of an appeal. In the premises, Ms. Achimpota argued that, the reference is not justified and it deserves to be dismissed with costs.

Responding to the course taken by the applicant's counsel who sought leave of the Court to make requisite prayer to include the omitted documents at the hearing of the appeal, Ms. Achimpota countered the same arguing the same not viable. She pointed out that, apart from that not being a subject for determination before the learned single Justice, such course is uncalled for in the wake of the decision refusing extension of time to include the omitted documents.

In rejoinder, Mr. Kamugisha apart from reiterating on what he had earlier on submitted, added that the letter to the Secretary to the Board was aimed at facilitating the applicant to be availed with the entire documents of the record of appeal. When asked by the Court as to what made the applicant not to revert to the Tribunal as a follow up on the inadequate supply of the documents, he replied that the exhibits were adduced in the evidence before the Board.

Having considered the submission of the parties, the issue for our determination is whether the applicant has made out a case warranting reversal of the decision of the learned single Justice. We are mindful of the legal principles governing references which are to the effect that:

1. On a reference, the full Court looks at the facts and submissions the basis of which the single Justice made the decision;
2. No new facts or evidence can be given by any party without prior leave of the Court; and
3. The single Justice's discretion is wide, unfettered and flexible; it can only be interfered with if there is misapprehension or improper appreciation of the law or facts applicable to that issue or misinterpretation of the law.

See- **DAUDI HAGA VS JENITHA ABDON MACHAFU**, Civil Reference No. 1 of 2000; **MARY UGOMBA VS RENE POINTE**, Civil Reference No, 11 of 1992; **VIP ENGINEERING AND MARKETING LTD AND OTHERS VS CITIBANK LTD**, Consolidated Civil References No. 6, 7 and 8 of 2006 (all unreported) which interpret rule 57 of the Old Rules and currently Rule 62 of the Tanzania

Court of Appeal Rules, 2009) and **G.A.B. SWALLE VS TANZANIA ZAMBIA RAILWAY AUTHORITY**, Civil Reference No.5 of 2011 (unreported).

Where the decision involves judicial discretion, in the case of **MBOGO AND ANOTHER VS SHAH** (1968) EA 93 the Court considered circumstances in which the discretionary powers of the Court may be interfered with include: misdirection; acting on matters it should not have acted, or failure to take into consideration matters which it should have taken consideration and in so doing arrived at a wrong jurisdiction.

Our careful perusal of the record accompanying this application and in particular, the Ruling of the learned single Justice shows that; the dismissal of the application was due to the applicant's failure to initially apply to the Tribunal to seek extension of time to request the omitted documents before knocking the doors of the Court for enlargement of time to include those documents in the record of appeal. Reliance on Rule 90 (1) of the Rules was in our view justified because it prescribes among other things, the limitation period within which the appellant can request to be supplied with the proceedings, Judgment and the decree from the Registrar. We say so because, since the present matter is related to a tax

dispute, the modality of lodging appeals to the Court from the Tribunal is regulated by the provisions of section 25 (1) and (2) of the Tax Revenue Appeals Act which embrace the application of the Rules having stipulated:

- "(1) Any person who is aggrieved by the decision of the Tribunal may preferred an appeal to the Court of Appeal.*
- (2) Appeal to the Court of Appeal shall lie on matters involving questions of law only **and the provisions of the Appellate Jurisdiction Act and the rules made thereunder shall apply mutatis mutandis to appeals from the decision of the Tribunal.**"*

[Emphasis supplied]

Furthermore, it really taxed our minds on what made the applicant who initially, and properly so, had requested to be supplied with the requisite documents from the Registrar of the Tribunal, subsequently, went to the Board seeking to be supplied with endorsed exhibits. We wish to point out that, since an appeal against the decision of the Board lies to the Tribunal, on appeal to the Court, the entire documentation on what

transpired before the Board and the Tribunal has to be sourced from the Registrar of the Tribunal and not otherwise. In this regard, it was entirely wrong for the applicant to apply to the Board to be supplied with the documents which were a subject of an appeal before the Tribunal. This in our considered view is what made the learned single Justice to hold that, following the expiry of thirty days within which the applicant had to apply to be supplied with the endorsed exhibits, the applicant ought to have applied to the Tribunal for extension of time to be supplied with the omitted documents before coming to the Court to seek enlargement of time to include those omitted documents.

In view of the aforesaid, we think it is not justified for the learned counsel for the applicant to blame the learned single Justice for the dismissal of the application before him with costs. As earlier pointed out, the dismissal was due to the obvious fact that it was not tenable. It is clear that, the applicant's letter to the Board was ineffectual having been sought after expiry of thirty days from the date of impugned judgment and in the wake of a certificate of delay dated 10/7/2017 issued to the applicant. In addition, it was contrary to the required procedure for the applicant to

apply to the Board for those exhibits. Besides, it was improper for the applicant to request to be supplied with the certificate of delay without initially having obtained the requisite documents from the Tribunal. We are fortified in that account because the delay to obtain the endorsed exhibits

Finally, we agree with Ms. Achimpota that, it is not viable to make an order to enable the applicant at the hearing of the appeal, to seek leave to lodge the omitted documents in terms of Rule 96 (7) of the Rules. We say so because **one**, that was not initially addressed by the parties before the learned single Justice considering that, Rule 96 (7) of the Rules came into being following the amendment to the Rules vide G.N. No 344 of 2019 operation and **two**, it would be tantamount to circumventing the decision of the Court which refused enlargement of time to include the omitted documents. This is absurd and it cannot be condoned by the Court.

In view of what we have endeavoured to explain, in the present application, none of the grounds fall among the stated principles

warranting reversal of the decision of the learned single Justice. On that account we dismiss the application with costs.

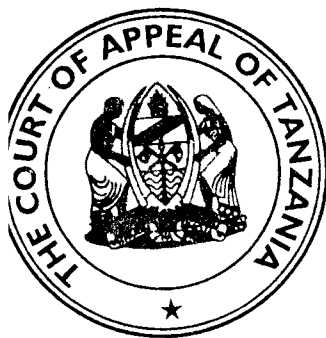
**DATED** at **DODOMA** this 11<sup>th</sup> day of June, 2020.

I. H. JUMA  
**CHIEF JUSTICE**

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

M. C. LEVIRA  
**JUSTICE OF APPEAL**

The Ruling delivered on 11<sup>th</sup> day of June 2020 in the presence of Mr. Francis Stivin holding brief of William Mang'ena, learned counsel for the Applicant and Ms. Gloria Achimpota, Senior State Attorney and Ms. Rose Sawaki, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**