

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

CIVIL APPLICATION NO. 465/20 OF 2019

VODACOM TANZANIA PUBLIC CO. LTD APPLICANT

VERSUS

COMMISSIONER GENERAL (TRA) RESPONDENT

**(Application for extension of time to lodge Memorandum and Record
of Appeal out of time arising from the Judgment and Decree of
the Tax Revenue Appeals Tribunal at Dar es Salaam)**

(Twaib, J.)

**dated the 6th day of April, 2011
in
Tax Appeal No. 17 of 2010**

RULING

26th February & 10th March, 2020

LEVIRA, J.A.:

The applicant, Vodacom Tanzania Public Limited Company is seeking extension of time within which to file an appeal to the Court against the decision of Tax Revenue Appeals Tribunal dated 6th April, 2011 in Tax Appeal No. 17 of 2010. The Notice of Motion is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and it is supported by the affidavit duly deposed by Sylvanus Mayenga, learned advocate. The application is not contested by the respondent.

At the hearing of the application, the applicant was represented by Ms. Hadija Kinyaka, learned advocate. The respondent did not enter appearance and therefore, hearing proceeded ex parte under Rule 63(2) of the Rules.

Ms. Kinyaka submitted in support of the application to the effect that, immediately after the delivery of the impugned decision of Tax Revenue Appeals Tribunal the applicant lodged an appeal against it. However, she said, on 20th March, 2015 before the appeal could be heard by the Court it was struck out for being incompetent as the drawn order from the Tribunal was only signed by the vice chairman; other members did not sign. The order of the Court striking out the appeal was served to the applicant on 15th February, 2015. According to Ms. Kinyaka, the applicant made a follow up to the Tribunal to get copies of the proper Judgment and the Decree but the same were not supplied to her until on 11th October, 2019. Having received those copies the applicant managed to prepare and lodge this application on 28th October, 2019. In the circumstances, Ms. Kinyaka argued that applicant has shown good cause for the delay. She therefore urged me to find

that the delay was not due to applicant's negligence but technical one citing the decision of the Court in **Fortunatus Masha v. William Shija and Another**, [1997] T. L. R 154 where it was held that:-

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

In the current application, having gone through the record and the submission by Ms. Kinyaka, I now proceed to consider whether the reason for the delay advanced by the applicant

amount to good cause in terms of Rule 10 of the Rules. It is stated under paragraph five of the supporting affidavit that immediately after the decision of the Tax Appeals Tribunal which was delivered on 6th April, 2011 the applicant lodged an appeal to the Court (Civil Appeal No. 13 of 2011). The said appeal was struck out on account of incompetence, as submitted by Ms. Kinyaka and clearly indicated under paragraphs 6 and 8 of the supporting affidavit. Paragraph 13 of the affidavit indicates that, the applicant was served with copies of the proper decision of the Tribunal on 11th October, 2019. From there time was spent in preparation, research and drafting of the application (paragraph 14).

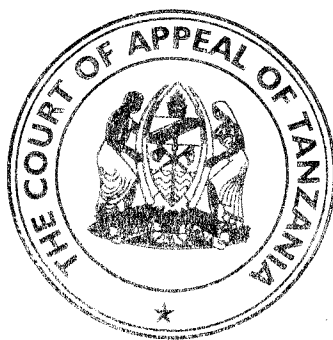
Having considered the reason for the delay advanced by the applicant, I am satisfied that the delay to lodge an appeal before the Court was not a result of applicant's negligence. The defects in the Judgment and Decree of the Tax Revenue Appeals Tribunal spotted out by the Court were above the applicant's control as rightly, in my view, stated by Ms. Kinyaka.

For that reason, I find and hold that the applicant has been able to advance good cause for the delay which justifies extension of time, as I accordingly do. Leave is hereby granted for the applicant to file her appeal within sixty days from the date of this Ruling.

DATED at DAR ES SALAAM this 6th day of March, 2020.

M.C. LEVIRA
JUSTICE OF APPEAL

The Ruling delivered this 10th day of March, 2020 in the presence of Mr. Thomson Luhanga, learned Counsel for the Applicant and Mr. Yohana Ndila, learned Counsel for the Respondent is hereby certified as a true copy of the original.




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL