

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

CIVIL APPLICATION NO. 101/20 OF 2021

**VODACOM TANZANIA PUBLIC LIMITED COMPANY.....APPLICANT
(Formerly Vodacom Tanzania Limited)**

Versus

**COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY.....RESPONDENT**

**(Application for extension of time to apply for revision of the decision of
Tax Revenue Appeals Tribunal at Dar es Salaam)**

(Hon. H.A Haji Vice Chairperson)

dated 15th day of December, 2020

In

Application No. 37 of 2020

.....

RULING

17th & 24th August, 2021

KOROSSO, J.A

The applicant, Vodacom Tanzania Public Limited Company (Formally Vodacom Tanzania Limited), lodged the present application pursuant to Rule 10 of the Court of Appeal Rules ("the Rules"). The relief sought is for extension of time within which to apply for revision against the proceedings and decision of the Tax Revenue Appeal Tribunal (TRAT) dated 15th December, 2020 in Application No. 37 of 2020 on the grounds set out in the Notice of Motion that: -

- (a) From 15th December 2020 when the decision of the Tribunal was pronounced, the applicant was waiting to be supplied with signed and certified copies of proceedings, ruling and drawn order.
- (b) From 8th March, 2021 when signed and certified copies of proceedings, ruling and drawn order were supplied upon the applicant until the date of filing the present application, the applicant has been drafting and preparing the present application for filing before the Court.
- (c) The applicant's delay in lodging revision is neither out of negligence nor lack of diligence.

The application is supported by the affidavit deposed by Joseph Waziri, a principal officer of the applicant. On the other hand, the respondent filed an affidavit in reply sworn by Gloria Achimpota, contesting the application.

To better appreciate the context of this application, at this juncture, a brief background of the matter as gathered from the affidavit in support of the application and annexures thereto is pertinent. In 2015, the respondent conducted an audit of the tax affairs of the

applicant for the purpose of income tax for the years of income 2012 and 2013. When the audit was completed, on 17/12/2015 the respondent issued a notice of adjusted assessment with the amount of Tshs. 40,495,380,566.86. Aggrieved by the notice, the applicant lodged a notice of objection whose determination was not in its favour. Dissatisfied by the decision of the respondent, the applicant appealed to the Tax Revenue Appeals Board (the Board) in Appeal No. 184 of 2016. On 4/10/2019 the Board delivered in favour of the respondent. Undaunted, the applicant appealed to the Tax Revenue Appeal Tribunal ("the TRAT") vide Appeal No. 16 of 2020. The applicant also lodged in the same tribunal an application for leave to adduce additional evidence of an expert witness on the permanency of telecommunication tower which was admitted as application No. 37 of 2020. TRAT in its decision delivered on 15/12/2020 dismissed the application for lack of merit and on the same day the applicant applied to be supplied with certified copies of proceedings, ruling and drawn order. The applicant had to wait until on 8/3/2021 to be supplied with the same, after having sent a couple of reminders. By the time the applicant was supplied with the necessary documents, the time to apply for revision that is, sixty (60)

days by virtue of Rule 65(4) of the Rules had already expired, hence the current application.

On the day the application came for hearing Ms. Hadija Kinyaka, learned advocate entered appearance for applicant and commenced by adopting the notice of motion and affidavit in support of the application so that they form part of her overall submission. She expounded that the reasons grounding the application are found in the notice of motion and paragraphs 10-12 of the affidavit. One, that on the same day after the TRAT decision was pronounced on 15/12/2020, the applicant applied to be supplied with certified copies of proceedings, ruling and drawn order however, there was some delay by the TRAT to supply them despite letters of reminder. The applicant was supplied with the same on 8/3/2021. She argued that at the time the applicant was provided with the necessary documents, the time to file revision had expired, and on 10/3/2021 the applicant applied for certificate of delay and also undertook to prepare the current application, filed on 18/3/2021.

She contended further that as averred in the affidavit in support of the application, the applicant has not been negligent or lacked diligence in pursuit of the preferred revision and that the delay to file it on time was occasioned by TRAT failing to supply the applicant with the

necessary documents essential in preparation of the revision. She argued further that after being supplied with the necessary documents when the time to prefer a revision or appeal had already run out, she spent some time to write to TRAT seeking for certificate of delay and to prepare the current application. To bolster her assertions, she referred me to the holdings in the cases of **Yusufu Same and Another vs. Hadija Yusufu** Civil Appeal No.1 of 2002 (page 7); **Patrick Magologazi Mongella vs The Board of Trustees of the Public Service Pensions Fund** Civil Application No. 1999/18 of 2018 (pages 10 and 11) and **Benedict Mumello vs. Bank of Tanzania** Civil Appeal No. 12 of 2002 (pages 7 and 11) (all unreported). In conclusion, she implored me to properly exercise the requisite discretion and extend time as prayed.

Responding to the submission, Mr. Yohana Ndila assisted by Ms. Hadja Senzia, both learned Senior State Attorneys representing the respondent, commenced his submission by alluding the respondent's opposition to the application. Thereafter, Mr. Ndila adopted the affidavit in reply so that it forms part of the oral submission.

Whilst, Mr. Ndila found no reason to challenge the delay within the period where the applicant was waiting for copies of necessary

documents as averred, however, he had qualms with the period from 8/3/2021 to 18/3/2021 that is, the days from when certified copies of the necessary documents were supplied to the time the applicant filed the present application. The respondent's misgivings were based on the ground that, as well established, where there is such a delay, the applicant is required to account for each day of delay. He argued that in the instant matter, the applicant has only provided a general account of delay stating that during the said period she was going through documents to determine whether the way forward was an appeal or revision. The learned State Attorney contended that the applicant has failed to account for each day of delay and therefore no good cause has been advanced. To cement his contention, he cited the case of **Karibu Textile Mills Limited vs. Commissioner General TRA**, Civil Application No. 129/20 of 2016 (unreported). He rested his submission by urging the Court to dismiss the application for lack of merit.

In rejoinder, the counsel for applicant reiterated the earlier arguments and submission emphasizing the fact that the applicant diligently utilized the time after being supplied with the necessary documents to initiate the process for filing the current application. To reinforce her assertion, she referred me to the decision in the case of

Patrick Magologozi Mongella (supra) where this Court held that, 12 days was sufficient for preparation of the revision. She then urged me to grant the application contending that the applicant has given a full account of the delay to file the requisite application within time.

Having heard the rival arguments from both parties the remaining task before me to resolve is whether the applicant has fronted good cause for the delay to warrant the exercise of my discretion in his favour in terms of Rule 10 of the Rules. For avoidance of doubt, I find it instructive to reproduce the said Rule in full: -

*"The Court may, **upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal**, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."*
[Emphasis added).

The above cited provision requires the applicant to show good cause for the delay in filing intended matter within the time prescribed. The Court has through a number of decisions provided guidelines on factors to consider when determining what is good cause in such cases

as: **Kalunga & Company Advocates Ltd vs National Bank of Commerce Ltd** [2006] TLR 235 and **Attorney General vs Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 (unreported) to mention but a few.

Matters to consider when exercising discretion to grant extension of time include; the length of delay, the reason for the delay and degree of prejudice that the respondent may suffer if the application is granted. As stated hereinabove, the duty is on the applicant to provide the relevant material as stated in **The Regional Manager TANROADS Kagera vs Ruaha Concrete Company limited**, Civil Application No. 96 of 2007 (unreported). As intimated above, the decision of TRAT subject of the instant application was delivered on 15/12/ 2020. Certainly, the applicant was required to file his application within sixty (60) days from the date of delivery of the decision in terms of Rule 65(4) of the Rules.

In the instant application essentially, the applicant's main reason for the delay centers on delay to be supplied with the TRAT documents related to Application No. 37 of 2020, which despite timely request and reminders, the same were supplied to the applicant on 8/3/2021, when the time to file intended revision had already expired. On the

respondent's side, the days in which the applicant was waiting for copies of necessary documents have not been challenged. However, what is challenged is the period from the receipt of the necessary documents to when the current application was filed, that is, 9/3/2021 to 18/3/2021, wanting the Court to find the said period not to be properly accounted for.

Having scrutinized the affidavital evidence and the submissions before me, I agree with the learned counsel for the respondent that there is no need to query the days up to the time the applicant received the certified copies of proceedings, ruling and drawn order in line with the Court's decisions in **Patrick Magologozi Mongella** (supra) and **Benedict Mabalanganya vs Romwald Sanga**, Civil Application No. 1 of 2002 (unreported).

In essence, the days that remain to be accounted for is from 9/3/2021 to 18/3/2021 which, when scrutinized, basically, the days to be explained are 9 days, that is 9/3/2021 to 17/3/2021. Understanding the duty falling upon the applicant to account for the 9 days delay, I am of the view that as argued by the respondent's counsel, the time the applicant used to apply for certificate of delay of which she was issued on 16/3/ 2021 has nothing to do with this application. Nevertheless, it is

important to remember the said fact does not do away with what is averred in paragraph 12 of the affidavit supporting the notice of motion. In that paragraph the applicant avers that from 8/3/2021 upon being supplied with the certified copies of the necessary documents until the date of filing the present application, the process of drafting and preparing the instant application proceeded simultaneously leading to its filing on the 18/3/2021.

From the foregoing, the underlying question is whether the 9 or even 10 days for the sake of argument are reasonable to prepare such an application and file. I am of the view that the said days are reasonable since they were spent preparing and filing the current application. This is in tandem with the decision of the single justice in **Patrick Magologozi Mongella** (supra), where 12 days were found to be reasonable in preparation and filing of the application for extension of time upon receipt of the necessary documents in pursuit of intended revision.

Essentially, for the foregoing reasons, I find the applicant has accounted for the delay which I hold was not inordinate. I am also of the view the respondent will not be prejudiced if this application is granted. In the premise, I find that there is good cause for granting the

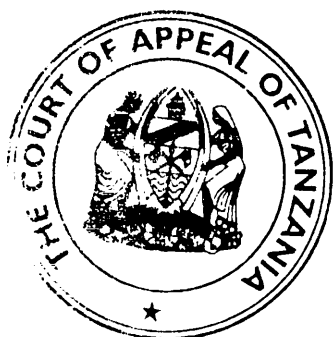
application as prayed and which I hereby do. The application for revision be filed within sixty days from the date of pronouncement of this Ruling. Costs be in the cause.

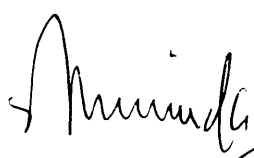
It is so Ordered.

DATED at DODOMA this 23rd day of August, 2021.

W.B. KOROSSO
JUSTICE OF APPEAL

This Ruling delivered on 24th day of August, 2021 in the presence of Ms. Hadija Senzia learned Senior State Attorney for the respondent who is also holding brief for Ms. Hadija Kinyaka for the applicant, is hereby certified as a true copy of original.




S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL