

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

**CIVIL APPLICATION NO. 245/20 OF 2021**

**DIANAROSE SPAREPARTS LTD.....APPLICANT**

**VERSUS**

**COMMISSIONER GENERAL**

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

**(Application for extension of time to file a Memorandum and Records Appeal  
in an intended Appeal from the Judgment of the Tax Revenue Appeals  
Tribunal at Dar es Salaam)**

**(Mjemmas, Chairperson.)**

**dated the 30<sup>th</sup> day of March, 2021**

**in**

**Appeal No. 11 of 2020**

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**RULING**

4<sup>th</sup> October & 19<sup>th</sup> December, 2022

**KENTE, J.A.:**

This is an application under rule 10 of the Tanzania Court of Appeal Rules 2009 (hereinafter the Rules) seeking an extension of time within which to file a memorandum and records of appeal to challenge the decision of the Tax Revenue Appeals Tribunal (the TRAT) dated 30<sup>th</sup> March, 2021 in appeal No. 11 of 2020. The notice of motion initiating this application is supported by an affidavit deposed by Mr. Raymond Wawa the applicant's counsel.

The gist of Mr. Wawa's averment is that, the applicant could not file the memorandum and records of appeal in time because of the reasons which were beyond its control. According to Mr. Wawa, the applicant could not beat the deadline after the person to whom it had taken the bundle of documents including the pleadings and proceedings in respect of the above mention appeal for purposes of photocopying and preparation of the records of appeal was taken ill and diagnosed with covid-19 and subsequently gone missing only to resurface on 8<sup>th</sup> June, 2021 which was the deadline and that by the time she finished photocopying the bulky documents, the time within which to file the memorandum and records of appeal had already elapsed. I shall get down to the nitty gritty of Mr. Wawa's averments at a later stage of this ruling. In the meantime, I have found it apt to highlight the factual background giving rise to this application as stated by the applicant's counsel in his written submissions and conceded by the respondent's counsel.

The applicant company is a licenced transporter dealing with transportation of transit goods. On various dates in the year 2016, it entered into a contract with one F. W. Wambua a Kenyan national whereby the applicant undertook to carry his goods identified as assorted

beverages (wines and spirits) which were on transit from the Republic of South Africa the country of origin, to the Republic of Kenya. The said goods were intended to exit the country through Namanga boarder. However, it was alleged before the Tax Revenue Appeals Board (the TRAB) and subsequently before the TRAT that, the respondent conducted an investigation which revealed that the said goods were illegally diverted into the Tanzanian local market. Upon mutual agreement, the said offence was compounded and the applicant was ordered to pay the attendant duties, and penalty and its business licence was suspended. This gave rise to grievances which came to a crescendo with an appeal to the TRAB (Appeal No. 28 of 2018). However, the said appeal was struck out for some jurisdictional reasons raised by the respondent. Dissatisfied, the appellant vainly appealed to the TRAT which held, as did the TRAB that, the Board had no jurisdiction to determine the appeal preferred by the appellant.

The applicant company which had yet to come to terms with the result of the compoundment order, sought to appeal to this Court. To that end, on 9<sup>th</sup> April, 2021 it promptly lodged a notice of appeal in terms Rule 83 (1) of the Rules and served its copy on the respondent as required under Rule 84 (1). By virtue of Rule 91 (1), the applicant was supposed to

lodge the memorandum and record of appeal not later than 8<sup>th</sup> June, 2021 but it could not do so hence the present application.

On this application for extension of time to file the memorandum and record of appeal out of time, the issue is mainly one. That is whether or not, the applicant has furnished good cause in terms of rule 10 of the rules to explain away the delay. In a bid to account for the delay, Mr. Wawa came up with the following averments as contained in paragraphs 29-31 of his affidavit reciting a litany of events.

29. That, on 4<sup>th</sup> June, 2021 the applicant took some documents including pleadings and annexures totaling to about 400 pages to the secretarial bureau to get them photocopied, for preparation of the records of appeal on agreement to be collected in the evening but when they went to collect them the applicant found the bureau closed.

30. That the secretarial bureau remained closed and the applicant could not trace its proprietor's residence until 8<sup>th</sup> June, 2021 when she showed up and claimed to have been sick for a week.

31. That the moment she finished photocopying the documents, the time within which to lodge the record and memorandum of appeal had already elapsed.

Expounding, Mr. Wawa contended that, the proprietor of the secretarial bureau could not photocopy the documents in time as she had contracted covid-19 which in his view, constitutes good cause to account for the delay in terms of rule 10 of the Rules. Asked why the person who allegedly retained the applicant's documents could not swear an affidavit in support of his averments, Mr. Wawa who seemed to know more than he was letting on, claimed that, she had refused and that on their part, they could not force her to do so. Other grounds advanced by Mr. Wawa in support of the application were that:

- i) The intended appeal raises important points of law.
- ii) The delay is not inordinate, and
- iii) The judgment sought to be challenged on appeal is fraught with some material irregularities.

Among other authorities, the learned counsel relied on our three decisions in the cases of **Seif Store Limited v. Zulfikar H. Karim**,

Civil Application No. 181 of 2013, **Mantrac Tanzania Limited V. Raymond Costa**, Civil Application No. 11 of 2010 and **National Bank of Commerce v. Alfred S. Mwita**, Civil Application No. 226 of 2014 (all unreported) contending in the end that, the case under scrutiny was a fit case for the Court to allow the application and enlarge time as prayed for by the applicant.

In reply Mr. Leyan Sabore learned counsel appearing for the respondent was diametrically opposed to Mr. Wawa's contention regarding indisposition of the proprietor of the secretarial bureau. With regard to the case of **P.B. Patel v. The Star Mineral Water and Ice Factory (Uganda) Ltd** (1961) E.A. 454 which Mr. Wawa relied on in support of the position that, sickness has been considered to be a good cause to explain away the delay to take necessary steps, Mr. Sabore submitted correctly so in my view that, the evidence presented to the Court did not prove that fact. The learned counsel contended for instance that, there was no affidavit by the said proprietor of the secretarial bureau to support Mr. Wawa's averments that she had been indisposed for such a period as not to be able to photostat the documents allegedly presented to her. Moreover, Mr. Sabore could not

agree with Mr. Wawa's contention that the said proprietor had refused to swear an affidavit relating to her indisposition. On a further note, Mr. Sabore contended that, Mr. Wawa had failed to attach a copy of a receipt to his affidavit showing that indeed the applicant had paid for the alleged secretarial services. With regard to Mr. Wawa's contention that the intended appeal raises very important points of law and that the judgment of the TRAT is tainted with some material irregularities, Mr. Sabore submitted very briefly that there is no irregularity to be rectified by this Court in the impugned judgement of the TRAT. The learned counsel further contended that, since the time sought to be extended has not been granted, it was rather premature for this Court to discuss the question of irregularity of the judgment of the TRAT.

The learned counsel finally argued that, the application had no merit mainly because of the absence of the evidence proving indisposition of the person who is alleged to have retained the applicant's documents. He thus prayed that the application be dismissed with costs.

It is trite law that in terms of rule 10 of the Rules, upon good cause being shown, this Court may extend the time limited by the Rules for the doing of any act authorized or required by the Rules. It is as well

common ground that, there are no hard and fast rules when it comes to the question as to what in law, constitutes good cause.

It is for that reason that in the case of **Seif Store Limited** (supra), we stated that:

*"The interpretation of what constitutes good cause is entirely left to the discretion of the court, a subjective approach. However, categories of what constitutes a good cause are never closed."*

The ill-defined nature of what constitutes "good cause" for purposes of extension of time is also reflected in our decision in the case of **Geita Gold Mining Limited V. Twalib Ally** Civil Application No. 14 of 2012 (unreported) to which we were referred by Mr. Wawa. Given the nature of the facts and circumstances obtaining in that case, we held that:

*"Good cause may debatably be inferred from the fact that the applicant has a statutory right of appeal whose enjoyment it has promptly begun to process."*

Going by the above-cited authorities and many others, it stands to reason that in application for extension of time, good cause depends on facts and circumstances of each case. It follows therefore that, in any



application for extension of time, since the facts of one case may not necessarily be the same as those obtaining in another case, each case must be approached from its own facts which will determine the viability of the cause of delay furnished by the applicant as can be gauged from a legal standpoint. The decision the court will ultimately arrive at, will mainly be influenced by how it will interpret the facts and circumstances of each case.

I will however say that, the law that is applicable to the instant case is as clear as stated in the case of **Benedict Kiwanga v. Principal Secretary Ministry of Health**, Civil Application No. 31 of 2000 (unreported) and many others. The stance of the law is that, where an affidavit mentions another person on a material point, that other person should also take an affidavit. (see also the cases of **NBC Ltd v. Superdoll Trailer Manufacturing Company Ltd** Civil Application No. 13 of 2002 and **Franconia Investments Ltd v. TIB Development Bank Ltd** Civil Application No. 270/1 of 2020 (both unreported). Like in the last cited case, I think that in the instant case, Mr. Wawa who is the applicant's advocate cannot purport to depose on another person's alleged illness and recovery from covid-19 without any

supporting evidence by way of deposition from that person. Nor can I accept Mr. Wawa's flimsy explanation that the said person had refused to swear an affidavit in support of the claim of her alleged indisposition. I therefore take it that the claim that the person who was entrusted to photocopy the documents forming the record of appeal got sick as not to be able to make the copies in time, was not established by evidence.

With regard to the allegation that the intended appeal raises some important points of law and that the decision by the TRAT is fraught with some material irregularities, I am not satisfied that, that is the case, if truth be told. With due respect, I think the contention that the TRAT decision is fraught with some material irregularities, being the applicant's last remaining holdouts, was added to the application as an afterthought. This is because, as I see it and as correctly submitted by Mr. Sabore, there is nothing suggesting, albeit *prima facie* that the decision made by the TRAT is suffering from any material irregularity or that the intended appeal raises any important question of law worth of determination by this Court. This, in my respectful view, is an assertion which may not only be premature but also wholly untenable.

In the ultimate event and upon considering the submissions made by both counsel in this application, I am of the view that, no good cause has been shown upon which I can exercise the discretionary powers bestowed on this Court in terms of rule 10 of the rules to extend the time within which the applicant may file the record and memorandum of appeal.

I accordingly dismiss the application with costs.

**DATED** at **DAR ES SALAAM** this 15<sup>th</sup> day of December, 2022.

P. M. KENTE  
**JUSTICE OF APPEAL**

The Ruling delivered this 19<sup>th</sup> day of December, 2022 in the presence of Mr. Raymond Wawa, learned counsel for the applicant and Ms. Jackline Chacha, learned State Attorney for the respondent is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**