

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

**CIVIL APPLICATION NO. 358/20 OF 2021**

**SHOPRITE CHECKERS TANZANIA LIMITED ..... APPLICANT**

**VERSUS**

**COMMISSIONER GENERAL OF TANZANIA**

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

**(Appeal from the Judgment and Decree of the Tax Revenue Appeals**

**Tribunal at Dar es Salaam)**

**(Mjemas Chairperson)**

**dated the 5<sup>th</sup> October, 2020**

**in**

**Appeal No. 28 of 2018**

**.....**

**RULING**

***3<sup>d</sup> July, 2023***

**MGONYA, J.A.:**

The Applicant herein is moving the Court under rules 4 (2) (a) (b), 10 and 96 (6) of the Tanzania Court of Appeal Rules 2009 (hereinafter the Rules) so that it enlarges the time within which she can file a supplementary record of appeal. In support of the notice of motion the

Applicant filed an affidavit sworn by Mr. Wilson Kamugisha Mukebezi, the Applicant's legal counsel.

Brief facts of what triggered this application as can be gathered from the Applicant's Affidavit goes thus; On 23<sup>rd</sup> January, 2015 the Applicant lodged in the Tax Appeals Board (the Board) an appeal which was registered as Tax Appeal No. 4 of 2015, against the Respondent's decision to impose Value Added Tax on her imported services. On 9<sup>th</sup> February 2018, the Board delivered its decision in favour of the Respondent. On 19<sup>th</sup> February, 2018, the Applicant requested for the certified copies of documents that were tendered as exhibits in Tax Appeal No. 4 of 2015. She then filed an Appeal to the Tax Revenue Appeals Tribunal (the Tribunal) which was registered as Tax Appeal No. 28 of 2018 in order to challenge the Board's decision. Having heard the appeal, the Tribunal upheld the Board's decision. Being aggrieved, the Applicant successful filed an application for extension of time to file an Appeal to the Court out of time, as he was already out of time. On 11<sup>th</sup> May, 2021 the Applicant wrote to the Tribunal requesting for certified copies of the proceedings, ruling and drawn order in Application No. 41 of 2020

(Annexure SCTL3 to the Affidavit). She also wrote a letter requesting for the endorsed exhibits which were tendered at the Board in Tax Appeal No. 4 of 2015 (Annexure STCL 4).

The Applicant deponed further that, on 29<sup>th</sup> June 2021, she wrote another letter requesting the Board to supply her with certified copies of tendered exhibits (Annexure SCTL 5). Those documents were not availed to her in time, therefore she lodged Civil Appeal No. 264 of 2021, without the requisite documents hoping that they will be supplied to her within 14 days, the time prescribed in the Rules. Unfortunately, upon several reminder's, she was supplied with the requested documents on 10<sup>th</sup> August, 2021 (annexure SCTL 7) which was hopelessly out of time, hence this application.

The Applicant's ground for filing this application is as it appears in the Notice of Motion that: On 12<sup>th</sup> July, 2021, she lodged before this court a record of appeal in Civil Appeal No. 264 of 2021. However, she did not attach necessary documents which includes; certified copies of the tendered exhibits in Tax Appeal No.4 of 2015, the certified copies of the proceedings, Ruling and Drawn Order of the Tribunal in Tax Application

No. 41 of 2020 which granted her extension of time to file Notice of Appeal out of time to the Court of Appeal, the endorsed exhibits and the notice of appeal to the Tax Board in Tax Appeal No. 2 of 2015.

During the hearing of this Application, Mr. Wilson Mukebezi learned Counsel appeared for the Applicant, while nobody appeared for the Respondent despite being duly summoned, hence the hearing proceeded *ex parte* against the Respondent. During the hearing, Counsel Mukebezi reiterated what he deposed in his Affidavit that, he seeks leave of this Court to lodge Supplementary Affidavit of Appeal in order to include exhibits which were tendered before the Board in Civil Appeal No. 261 of 2021 which is pending before this Court. By referring this Court to paragraph 14 of the Affidavit, he submitted that, the Applicant was supplied with the records of the proceedings and proceeded to file an appeal without including the exhibits. Unfortunately, the 14 days in which she would have applied to lodge the supplementary record without leave lapsed before the Applicant was availed with the said documents. It was further submission that, as the nature of the prayer do not prejudice the Respondent and also the proceedings will enable this Court to reach to a

fair decision. In the premises he prayed that the Applicant be granted the under sought.

Having heard the Applicant's Counsel then the issue before this Court is whether the Applicant deserves the extension of time or not.

The Applicant filed this application on 13<sup>th</sup> August, 2021, the same is not resisted by the Respondent as up to the moment when the application was called for hearing as the Respondent neither filed an affidavit in reply nor appeared before this Court as stated earlier although there is a proof of service.

As per rule 10 of the Rules the extension of time is granted where the Applicant has shown good cause for the delay. The good cause is determined by considering various factors, including promptness in taking action after one has learned of the delay, considering whether the Applicant has accounted for each delayed day, and the existence of the sufficient point of law such as illegality of the decision sought to be impugned. See; **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 [2011] TZCA 4; [03 October, 2011, TANZLII], **Ngao Godwin Losero v. Julius Mwarabu**, Civil

Application No. 10 of 2015 and **Regional Manager Tanroads Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 all unreported. In **Lyamuya Construction** case (supra) this Court stated that:

*"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated: -*

- (a) The applicant must account for all the period of delay;*
- (b) The delay should not be inordinate;*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."*

In the instant application as indicated above, the applicant asks for enlargement of time within which to file the omitted documents in record of appeal. The right to file the omitted documents has been provided under Rule 96(6) of the Rules. The said Rule provides that:

*"(6) Where a document referred to in rule 96(1) and (2) is omitted from the record of appeal the appellant may within fourteen days of lodging the record of appeal, without prior permission and thereafter, informally, with the permission of the Registrar, include the document in the record of appeal by lodging an additional record of appeal."*

Also Rule 96(7) of the Rules provides that where the case is called on for hearing, the Court is of opinion that document referred to in Rule 96(1) and (2) is omitted from the record of appeal, it may on its own motion or upon an informal Application grant leave to the Appellant to lodge a supplementary record of appeal.

By referring to Rule 96(1) of the Rules, it is observed that the record of appeal must include the certified copies of the proceedings, judgment

or ruling, decree or order and other necessary documents for proper determination of the Appeal.

It is garnered from the Applicant's affidavit that the omitted documents she intends to file includes the certified copies of exhibits, the ruling, proceedings and decree of the Board. As to when those omitted records were supposed to be filed without a leave, as per the wording of Rule 96(6) of the Rules, counting from when the record of appeal was filed which is on 12<sup>th</sup> July, 2021 (Paragraph 10 of the Affidavit), then the same were supposed to be filed on or before 26<sup>th</sup> July, 2021. But due to the reasons deposed of in the Affidavit the same were not filed within the prescribed time limit.

In this application since what is sought is extension of time to file the omitted documents because, the Applicant was delayed to be availed with the said documents by the Board; I find that good cause has been shown in explaining the delay was not on account of the Applicant's fault. Thus, for better meeting the ends of justice, I find that the Applicant deserves the extension of time to file the supplementary record.



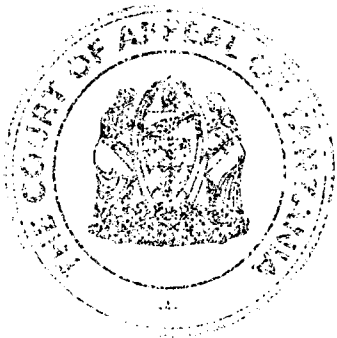
Accordingly, the supplementary record of appeal mentioned in the affidavit shall be lodged within seven days from the date of this order.


It is so ordered.

**DATED** at **DAR ES SALAAM** this 3<sup>rd</sup> day of July, 2023.

L. E. MGONYA  
**JUSTICE OF APPEAL**

The Ruling delivered this 3<sup>rd</sup> day of July, 2023 in the presence of Mr. Wilson Mukebezi, learned counsel for the Applicant and in the absence of the Respondent, is hereby certified as a true copy of the original.



  
C. M. MAGESSA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**