

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

CIVIL APPLICATION NO. 274/18 OF 2022

OSWALD PHILIP SILWAMBA.....APPLICANT

VERSUS

TANZANIA ZAMBIA RAILWAY AUTHORITY.....1st RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2nd RESPONDENT

**(Application for Extension of time to file appeal from the Judgment and
Decree of the High Court of Tanzania, Labour Division/Then Industrial
Court at Dar es Salaam)**

(Mtiginjola, Deputy Chairperson)

dated the 09th March, 2010

in

Trade Dispute No. 3 of 2008

RULING

14th June & 9th August, 2023

FIKIRINI, J.A.:

I have before me a notice of motion brought under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The gist of the application is extension of time to appeal out of time. The applicant, Oswald Phillip Silwamba, swore an affidavit and filed a written submissions supporting the application.

The respondents, Tanzania Zambia Railway Authority (TAZARA) as the 1st respondent and the Attorney General as the 2nd respondent, opposed the application. An affidavit in reply by Marco MNS Mabala, 1st respondent's Corporation Secretary and written submissions by the Office of the Solicitor General were filed.

In his affidavit, the applicant gave a detailed account of what transpired, resulting in the present application. The contents in paragraphs 18, 19, 20 and 21 are of particular interest to the present application. After twists and turns in his case, the applicant finally got access to this Court vide Civil Application No. 90/18 of 2020, seeking extension of time. The application was, however, withdrawn on 22nd July, 2021 when the applicant discovered the notice of appeal and certificate of delay were not part of the documents annexed to the application for extension of time. Still persistent in pursuing his rights, on 26th October, 2021, he applied for extension of time before the High Court in Miscellaneous Labour Application No. 409 of 2021. The application was granted on 13th April, 2022. This was followed by the application for certified copies of proceedings, judgment and decree in

Trade Dispute No. 3 of 2008 on 22nd April, 2022. The applicant then filed a notice of appeal on 27th April, 2022, which was well within time.

Pursuant to rule 90 (1) of the Rules, the applicant should have filed his appeal within sixty (60) days if all the documents were in order and accordingly serve the respondents. Instead, the applicant had preferred this application for extension of time to file appeal out of time. It is evident that, when this application was filed on 24th May, 2022, the applicant was well within the sixty (60) days within which he was to lodge his appeal.

On the hearing day, the applicant appeared, unrepresented and Ms. Selina Kapange, learned Senior State Attorney assisted by Mr. Juma Mohamed and Ms. Frida Mollei, learned State Attorneys appeared for the respondents. The applicant, who had been assisted in drawing the relevant documents to this application by Widowers/Widow and Orphans Legal Assistance in Tanzania with their office at Msimbazi Centre, had nothing much to submit to the Court in expounding for the reliefs he sought. He, however, contended that the delays at any stage of his way were not out of negligence or that he did not act diligently but caused by

his advocates or the one assisting him. He thus prayed for me to grant the application, specifically because the impugned decision is marred with illegalities that must be rectified.

Ms. Kapange, on behalf of the respondents, started by adopting the affidavit in reply and written submissions filed opposing the grant of the application. Her basis for the objection was that the applicant had failed to account for all the days of the delay. Admitting that the applicant was within the prescribed time of sixty (60) days to lodge his appeal when he lodged this application, but to her dismay, he has come to Court again seeking for extension of time. Moreover, in his affidavit supporting the application, the applicant has not stated how the leave he was granted was used, insisted the learned State Attorney. In that light, she disapproved the grant of extension of time for failure to account for the delayed days. She also disputed the alleged assistance from other people claimed by the applicant, as, according to her, he had all along been by himself. She finally urged that, since he failed to use the opportunity given, the present application did not deserve granting and prayed for its dismissal.

Briefly rejoining, the applicant raised a concern that despite being served with a copy of written submissions, he was not served with an affidavit in reply.

This application for extension of time preferred under rule 10 of the Rules calls for me to examine what the rule requires when such an application is to be determined. This thus necessitates visiting the provision of rule 10 of the Rules, which provides as follows:-

"10-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 expiration of that time and 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."

The powers of extending time under rule 10 are undoubtedly broad and discretionary and should be flexibly applied, considering the relevant facts of each case before it. What is required is for the applicant to show

good or sufficient cause for those discretionary powers to be exercised, albeit judiciously.

Several decisions have shed light and illustrated elaborately how the said powers could be exercised. For instance, in the case **Gibb Eastern Africa Ltd v. Syscon Builders Ltd & 2 Others**, Civil Application No. 5 of 2005 (unreported), in which the case of **Costellow v. Somerset County Council** (1993) 1 WLR 256, 263, was referred to, the Court had this to say:

"The first principle is that the rules of Court and associated rules of practice, devised in the public interest to promote the expeditious dispatch of litigation, must be observed. The prescribed time limits are not targets to be aimed at or expressions of pious hope but requirements to be met. The second principle is that a plaintiff should not in the ordinary way be denied an adjudication of his claim on its merits because of procedural default, unless the default causes prejudice to his opponent for which an award of costs cannot compensate."

Along the same line in **Mbogo v. Shah** [1968] E.A., the defunct Court of Appeal for Eastern Africa, it was held thus:-

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. **These factors include the length of the delay, the reason for the delay, and the degree of prejudice to the respondent or defendant if time is extended.**"* [Emphasis added]

Back home, several equally significant decisions on the subject have been annexed to the respondents' written submissions. See: **Wambele Mtumwa Shabaan v. Mohamed Hamis**, Civil Reference No. 8 of 2016, **Glory Shifwaya Samson v. Raphael James Mwinuka**, Civil Application No. 506/17 of 2019, **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (all unreported) and more mentioned in the submissions. In all those decisions, while admitting that the court has unfettered wide discretion to grant or not to grant the application for

extension of time, the emphasis has all along been that the applicant has to show sufficient or good cause.

Given that, there is no exact definition of what amounts to a sufficient or good cause, though not exhaustive, guidelines have been spelt out through the decisions. These have been well articulated in the case of **Lyamuya Construction Company Ltd** (supra), that there must be an account for all delayed days, the delay should not be inordinate, and the applicant has to exhibit diligence and not negligence, apathy, or sloppiness. On a different note, a point of law of sufficient importance, such as illegality, has been considered to constitute sufficient or good cause.

The applicant in the present application, first and foremost, as submitted by Ms. Kapange, the submission I subscribe to, was not supposed to file for an extension of time as he was within the sixty (60) days within which he was to lodge his appeal, which he did not. Secondly, the present application though unnecessary was filed within the time he could justly lodge his appeal. In my view, this shows carefulness. I am saying so because the applicant, right after the grant

of the application, on 22nd April, 2022 applied to be supplied with copies of the necessary documents as exhibited in annexure OP-17, implying he did not have those documents. Without being supplied with those documents, which it was not known when they would be ready, an extension of time was unavoidable. This is because, without an order for extension of time to lodge his appeal, any attempt would have been met with an order to strike out the appeal for being filed out of time.

Particularly in the circumstances of the present application, it is without a doubt that the applicant has been diligently pursuing his rights, albeit wrongly. Still, certainly, he has not depicted sloppiness and negligence, the aspects loathed by the Court. Moreover, the present application was filed within the sixty (60) days he could lodge his appeal, I, therefore, find it to be in line with tenets of rule 10 of the Rules, which provides thus:-

".....for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act..."

To construe the applicant's effort otherwise would, in my view, deny him access to justice.

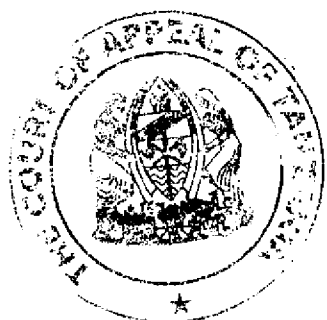
In conclusion, I find the application for extension of time justified and proceed to grant it. The applicant's time to lodge his appeal is extended for sixty (60) days from the date of delivery of this ruling.


It is so ordered.

DATED at DAR ES SALAAM this 7th day of August, 2023.

P. S. FIKIRINI
JUSTICE OF APPEAL

The Ruling delivered this 9th day of August, 2023 in the presence of applicant in person, Mr. Lukelo Samwel, learned Principal State Attorney and Ms. Caroline Mapengu, learned State Attorney, for the respondent, is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL