

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 285 OF 2015
(From CC 231 of 2003)**

TANZANIA TEA PACKERS LIMITED APPLICANT
Versus
TEA BOARD OF TANZANIA RESPONDENT

Date of Last Order: 11th September, 2015
Date of Ruling: 13th November, 2015

RULING

FELESHI, J.:

This is a ruling in respect of an application in terms of section 11(1) of the Appellate Jurisdiction Act, [CAP. 141 R.E, 2002] for extension of time to lodge Notice of Appeal against the Judgment and Decree of the High Court dated 07/03/2006. The application was made by way of chamber summons supported by an affidavit affirmed by advocate SINARE ZAHARAN.

In his affidavit, advocate SINARE ZAHARAN stated that, after delivery of Judgment, on 08/03/2006, the applicant lodged Notice of Appeal applying to the Registrar of the Court to be supplied with certified copies of Proceedings, Judgment and Decree for purposes of lodging the intended appeal. Thereafter, on 09/10/2006, the applicant lodged her appeal which was registered as Civil Appeal No. 96/2006.

On 26/03/2012, the said appeal was struck out for being incompetent as the appeal was supported by a wrongly dated Decree. He added, the delay in lodging the Notice of Appeal was beyond control of the applicant and that she has been all along striving to have her appeal determined.

The hearing of this application was conducted by way of Written Submissions where parties complied with, hence, this Ruling. To argue for the application, the applicant engaged the services of Ensafira Tanzania Attorneys while the respondent was represented by Mhango and Company Advocates. For undisclosed reasons, the applicant did not file a rejoinder.

In their written submissions, the learned applicant's counsel submitted that, the cause of the delay suffices a good reason to warrant grant of extension of time for there is no special standards in ascertaining sufficient reason as underscored by the Court of Appeal in the case of **Selina Chibago vs. Finihas Chibago**, Civil Application No. 182 "A" of 2007 (Dar es Salaam Registry) (Unreported) that:-

"No particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each applicant".

Besides, he argued that, the delay was not caused, contributed or manipulated by a dilatory conduct on the part of the applicant. He urged this Court to align with the decision in the defunct East African Court of Appeal of Tanzania in **Shanti vs. Hindoche & Others** [1973] E.A. 2007.

In reply, the respondent's counsel submitted, the applicant has not shown the cause of inordinate delay in filing the present application from

the time the Court of Appeal struck out the appeal, that is, on 26/03/2012 to the time of filing the present application, that is, on 20/05/2015.

He urged this Court to be guided by the decision in **The Registered Trustees of The Archdiocese Of Dar Es Salaam Vs. The Chairman Bunju Village Government and Eleven Others**, Civil Appeal No. 147 of 2006 (Dar es Salaam), (Unreported) and **Cosmos Construction Co. Ltd vs. Arrow Garments Ltd** [1992] T.L.R 127. From the above, he urged for the application to be dismissed with costs.

As correctly submitted by the respondent's counsel, the applicant's counsel has availed no reasons as to the delay from filing of the present application for extension of time to lodge a Notice of Appeal to the Court of Appeal of Tanzania from 26/03/2012 to the time of filing the present application on 20/05/2015 which is over three (3) years time.

Notably, it is clear that, applications for extension of time in circumstances where the cause of incompetency is due to reasons beyond the applicant's control, such as, improper signing of documents issued by Court as happened in the present matter, then, such applications should be granted provided that there is no portion of blame on part of the applicant's counsel. This position was made clear by the Court of Appeal of Tanzania in **Veronica Fubile vs. National Insurance Corporation & 3 Others**, Civil Application No. 168/2008 where the Court considered **Shanti vs. Hindoche & Others** [1973] E.A. 207 and hold that:-

" That he can show is that the delay has not been caused or contributed by dilatory conduct on his part".

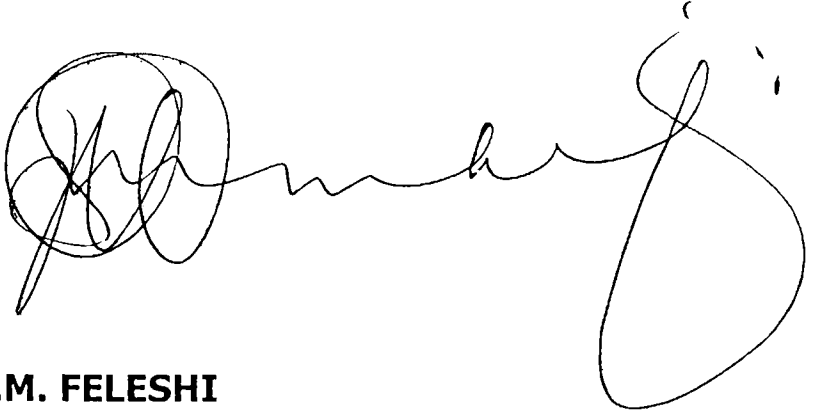
Besides, but if there was an attributable negligence on the part of the applicant's advocate, yet, from the articulated reasons herein above, the applicant deserves grant of the sought leave for extension of time. This tally what the Court of Appeal of Tanzania had occasionally observed such as in the case of **Paul Juma vs. Diesel & Autoelectric Services Limited & 2 Others**, Civil Application No. 54 of 2007.

Notably, in this matter, the record shows that, the applicant lied idle or rather was dormant in pursuing an application for extension of time to lodge Notice Appeal to the Court of Appeal for an inordinate period of more than three (3) years, that is, from 26/03/2012 to the time of filing the present application on 20/05/2015. Unfortunately, no reason(s) have been availed by the applicant either in her affidavit or written submission.

Though clear that some of the faults were orchestrated by the High Court in issuing to the applicant defective Court documents which could be a good reason to grant the sought extension of time to lodge Notice of Appeal for it would be attributable to the High Court thus not to be shouldered on the applicant as underscored in **AI OUTDOOR TANZANIA LIMITED AND ANOTHER Vs. ALLIANCE MEDIA TANZANIA LIMITED**, Civil Application No. 178/2008, yet, failure to accord reasons for the inordinate inaction of the applicant to seek the present application, that is, over three (3) years time, then, that renders the sought reliefs unjustifiable.

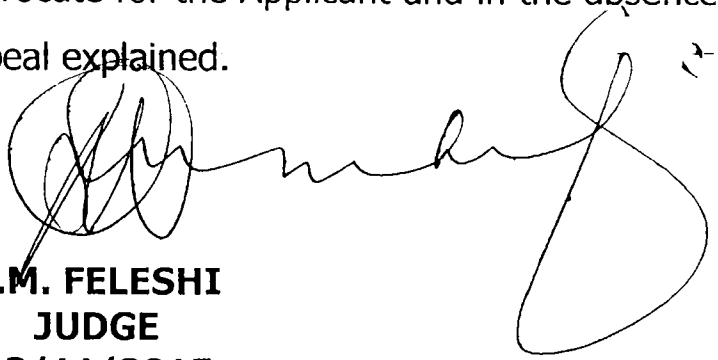
From the above, the application at hand lacks merits in law and is hereby dismissed. Consequently, the respondent should have his costs.

Order accordingly.



E.M. FELESHI
JUDGE
13/11/2015

Ruling delivered in chambers this 13th day of November, 2015 in presence of Mr. Gerald Riwa, Advocate for the Applicant and in the absence of the Respondent. Right of Appeal explained.



E.M. FELESHI
JUDGE
13/11/2015