

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MISC. CIVIL APPLICATION NO. 20 OF 2019**

*(Originating from Civil Case No. 4 of 2018 of the District Court of Mbinga)*

**TANCOAL ENERGY LTD ..... APPLICANT**

**VERSUS**

**AMNEC CO. LTD ..... RESPONDENT**

*Date of filing last submission: 02/07/2020*

*Date of Ruling: 14/07/2020*

**RULING.**

**I. ARUFANI, J.**

This ruling is for the application filed in this court by the applicant, TANCOAL ENERGY LTD seeking for extension of time within which to file an appeal in the court to challenge the decision of the District Court of Mbinga (hereinafter referred as the trial court) delivered in Civil Case No. 4 of 2018 dated 8<sup>th</sup> November, 2018. The application is made under section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2002 and is supported by the affidavit sworn by Edward Mwanga, the applicant's Principal Officer. The application was strongly opposed by the respondent through the counter affidavit sworn by Julius Mashauri, the respondent's Principal Officer.

While the applicant was represented in the application by Mr. Dickson Pius Ndunguru, learned advocate the respondent was represented by Mr. Eliseus Ndunguru, learned advocate. Due to the outbreak of COVID- 19 decease the court directed the counsel for the parties to argue the application by way of written submissions. I commend the counsel for the parties for filing their written submissions in the court within the time given by the court.

The counsel for the applicant stated in his written submission that, the application at hand is based on one ground that, the applicant was late to appeal as she was waiting for certified copies of ruling and drawn order from the trial court which were necessary documents for lodging the appeal in the court. He argued that, as the impugned decision was made by the trial court in its original jurisdiction the appeal to this court is governed by Order XXXIX Rule 1 (1) of the Civil Procedure Code, Cap 33 R.E 2002 which requires the memorandum of appeal be accompanied by copies of decree and judgment or ruling and drawn order on which it is founded.

He stated that, although the impugned ruling of the trial court was delivered on 8<sup>th</sup> November, 2018 and the applicant applied for its copy together with the copy of the drawn order on the same date but the sought documents were supplied to the applicant on 10<sup>th</sup> October, 2019. He stated that was 270 days out of 90 days provided under the law for lodging the appeal of this nature in the court. He referred the court to section 19 (2) of the Law of Limitation Act and states is empowering the court to exclude time spent in waiting for copies of judgment and decree

intended to be challenged. He submitted that, as the copies of the documents required for appeal were supplied to the applicant out of 90 days provided under the law the application be granted. He supported his submission with the case of **Asha Mkoma V. Attorney General**, Civil Application No. 54 of 2010, CAT at DSM (unreported).

In reply the counsel for the respondent states that, paragraph 4 of the affidavit of Edward Mwanga which is supporting the application shows the applicant applied for the copies of the ruling and drawn order on 8<sup>th</sup> November, 2018 when the ruling was delivered. He stated that, the letters seeking for the said documents which are annexed to the affidavit as annexure P1 shows were written by Mr. Dickson Pius Ndunguru, the counsel for the applicant. He argued that, there is no any proof that the stated letters were filed in the trial court on the alleged date as they are only bearing stamps displaying 8 Nov 2018 and 22 Nov 2018 respectively.

He went on arguing that, the copies of the order and the ruling do not show when were supplied to the applicant. He stated that, the two letters were supposed to be endorsed by an officer of the trial court who received them to show were filed in the trial court. To support his argument he referred the court to the case of **Lekashingo Building Construction Co. Ltd V. Festo Lukelo t/a Kamwene Investment**, Civil Appeal No. 192 of 2016, CAT at Iringa (unreported) where the Court of Appeal held that, to prove a document has been filed in the court it must be endorsed by the officer receiving the same. He also referred the court to the case of **Nataniel Lungu V. Isdory Moyo**, Misc. Land Case

No. 30 of 2019, HC at Songea (unreported) where the position held by the Court of Appeal of Tanzania in the above case was adopted.

He stated that, another proof that the said letter was filed in the trial court is payment of the prescribed fees. He stated that, the law is very clear that, anything filed before the court must be evidenced by payment of prescribed fees. He said there is nothing to show the applicant paid the prescribed fees and that caused him to submit that, as there is no payment of prescribed fees that shows the applicant did not file the alleged letters before the trial court on the dates indicated on the letters. He argued further that, the ruling of the trial court was certified on 8<sup>th</sup> November, 2018 when the applicant purported to have applied for the same. He stated that, the applicant was negligent in prosecuting his intended appeal as there is no any evidence to show he made follow up of the sought documents. In fine he prayed the application to be dismissed with costs.

In his rejoinder the counsel for the applicant stated that, if the court will revisit the two letters attached to the affidavit supporting the application will find the letters were endorsed with stamp showing were received in the trial court on 8<sup>th</sup> and 22<sup>nd</sup> November, 2018. He stated that, if the applicant did not apply for the stated documents they would have not been supplied to them. He prayed the court to ignore the cases referred in the submission of the counsel for the respondent and prayed the application to be allowed with costs.

After considering the submissions made to this court by the applicant and going through the affidavit supporting the application the court has

found that, as the application is made under section 14 (1) of the Law of Limitation Act the issue to determine in this application is whether the applicant has satisfied the court he was delayed by reasonable or sufficient cause to appeal within the time prescribed by the law. The reason for framing the above issue is because that is what is required by section 14 (1) of the Law of Limitation Act upon which the application at hand is made.

The court has found the cause advanced to the court by the applicant for delay to lodge the appeal in the court within the time prescribed by the law is delay to get copies of ruling and drawn order intended to be challenged in the intended appeal. The court has considered the stated cause for the delay and after going through the record of the matter at hand it has found it is deposed at paragraph 3 of the affidavit supporting the application and without being disputed by the respondent that, the ruling intended to be challenged was delivered on 8<sup>th</sup> November, 2018.

The court has found it is deposed at paragraph 4, 5, 6, 7 and 8 of the affidavit supporting the application that, the applicant applied for the copies of the impugned ruling and drawn order on the same date. It is deposed further in the same paragraphs that, despite the fact that the applicant reminded her prayer of being supplied with the copy of drawn order on 22<sup>nd</sup> November, 2018 but it was until 10<sup>th</sup> October, 2019 is when the applicant was supplied with the copy of drawn order. The deponent stated further that, when the applicant was supplied with the said document about 270 days had elapsed while the appeal was supposed to

be filed in the court within 90 days from the date of delivery of the impugned ruling.

The court has found as rightly argued by the counsel for the applicant the appeal the applicant intends to file in this court is originating from the matter determined by the trial court in its original jurisdiction. That being the position the appeal to be filed in the court is supposed to be governed by Order XL Rule 2 of the Civil Procedure Code read together with Order XXXIX Rule 1 (1) of the same law. The cited provisions of the law requires memorandum of appeal to be accompanied by a copy of ruling and drawn order from which the appeal is founded. That being the requirement of the law it is crystal clear that, the applicant would have not been able to file appeal in the court without having the copy of the impugned ruling and its drawn order.

The court has found the counsel for the respondent contended that, there is no proof that the applicant applied for the copies of the ruling and drawn order from the trial court as the letters purported to have been used to apply for the copies of the ruling and the drawn order annexed to the affidavit as annexure A1 were not endorsed by an officer of the trial court. The court has considered this argument but failed to see any merit in it. The court has arrived to the above finding after seeing that, the counsel for the respondent did not state which provision of the law requires a letter for seeking copies of ruling and order filed in the trial court to be endorsed to prove it was filed in the trial court and if it was not endorsed it will be taken it was not filed in the trial court.

Although it is true that endorsement of a document filed in a court assist to remove possibility of cheating and control unscrupulous parties and officers intending to cover up their negligence, lack of diligence and ill motive but a mere failure to endorse the letters filed in the trial court to request for copies of ruling and drawn order cannot be used as a sufficient ground to establish the mentioned documents were not sought from the trial court. The court has found that, although it is true that the letters annexed to the affidavit supporting the application were not endorsed by signature of an officer of the trial court who received them, but as rightly argued by the counsel for the applicant, the letters were stamped by the stamp of the trial court bearing the dates showing when were received in the trial court. To the view of this court that can be taken as a proof that the letters were filed in the trial court on the dates indicated on the stamp affixed on the letters.

The court has carefully read the case of **Lekashingo Building Construction Co. Ltd** (supra) cited by the counsel for the respondent to support his argument but find is distinguishable from the case at hand. The court has arrived to the above finding after seeing the cited case was dealing with endorsement of a document filed in the Court of Appeal as required by the Court of Appeal Rules, 2009 which do not apply in the trial court. The court has also read the case of **Nathaniel Lungu** (supra) and finds that, it is not only that this court is not bound by the holding made in that case as it is a decision of the High Court but is also distinguishable from the case at hand.

The court has arrived to the above finding after seeing that, the letter purported to have been used to apply for copies of judgment and decree in the case of **Nathaniel Lungu** (supra) was neither stamped nor endorsed by the court officer to show the date and time of been received in the court. That is different from the case at hand because although the letters annexed in the affidavit supporting the application at hand were not endorsed by the officer of the trial court received them but were stamped by the stamp of the trial court bearing the dated on which were received in the trial court. The above finding makes the court to find the above argument which was put forward by the counsel for the respondent has no any merit.

The counsel for the respondent raised another argument that, there is no proof of payment of court fees for filing the mentioned letters in the trial court to establish the applicant applied for the mentioned copies of ruling and drawn order. As it was for the first argument the counsel for the respondent has not disclosed in his submission which law requires fees to be paid for a letter filed in the trial court to apply for copies of ruling and drawn order. The court has gone through the Court Fees Rules which is governing various fees required to be paid in the trial court but failed to see any rule requiring fees to be paid for filing in the trial court a letter seeking for copy of any document. That makes the court to find this argument has no any merit.

There is another argument raised by the counsel for the respondent that, as the impugned ruling was certified on 8<sup>th</sup> November, 2018 which is the date stated the counsel for the applicant applied for the same, the



applicant was negligent in prosecuting the intended appeal as there is no proof of making follow up of the sought documents. The court has found it is true that the copy of ruling annexed to the affidavit supporting the application shows was certified on 8<sup>th</sup> November, 2018 and is not showing when it was applied for and when it was supplied to the applicant.

However, the court has found the letter filed in the trial court and bearing a stamp displaying the date of 22<sup>nd</sup> November, 2018 shows the applicant was seeking for only copy of drawn order and not together with the copy of ruling as sought in the letter bearing a stamp displaying the date of 8<sup>th</sup> November, 2018. To the view of this court that shows when the applicant filed in the trial court the letter bearing a stamp displaying the date of 22<sup>nd</sup> November, 2018 she had already been supplied with the copy of the ruling that is why she was not seeking for the same. That being the position the court has found the copy of the drawn order annexed to the said affidavit which as rightly argued by the counsel for the applicant was an important document for lodging the appeal the applicant intends to file in the court out of time shows it was issued on 10<sup>th</sup> October, 2019.

If the copy of the drawn order was issued on the mentioned date it is obvious that, even if the applicant was issued with the copy of the ruling on the date when it was certified it is crystal clear that, as provided under Order XXXIX Rule 1 (1) of the Civil Procedure Code it would have not been possible for the applicant to appeal within the prescribed period of time as the applicant was required to accompany the memorandum of appeal to be filed in the court with the copy of drawn order. In the premises the court has found as the application at hand was filed in the court on 11<sup>th</sup> October,

2019 which is one day from when it was issued and as rightly argued by the counsel for the applicant, the period of time spent in awaiting for the copy of the drawn order to be challenged is supposed to be excluded from the period of time prescribed by the law for lodging the appeal in the court as provided under section 19 (2) of the Law of Limitation Act.

If the time spent in awaiting for the copy of the drawn order will be excluded from the period of time prescribed by the law for lodging the appeal the applicant intends to file in the court it will be found it is not only that the arguments raised by the counsel for the respondent are devoid of merit but also they have no legs to stand on. In the upshot the court has found the applicant has been able to satisfy the court she was prevented by sufficient cause to file the appeal in the court within the time prescribed by the law. Consequently, the applicant's application is hereby granted and the applicant is given thirty (30) days from the date of this ruling to file the appeal in this court. No order as to costs. It is so ordered.

Dated at Songea this 14<sup>th</sup> day of July, 2020



**I. ARUFANI**

**JUDGE**

**14/07/2020**

**Court:**

Ruling delivered today in the presence of Mr. Makame Sengo, Advocate holding brief of Mr. Dickson Ndunguru, Advocate for the applicant and in the absence of the respondent and their counsel who is well aware the matter is coming for ruling today. Right of appeal to the court of Appeal is fully explained.



**I. ARUFANI**

**JUDGE**

**14/07/2020**