

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY DAR ES SALAAM)  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 256 OF 2016**

(Originating from the decision of this court in Misc. Civil Application No. 555 of 2015)

**TALGWU ON BEHALF OF  
OMARY ZUBERI & 576 OTHERS.....APPLICANTS**

**VERSUS**

**ILALA MUNICIPAL COUNCIL.....1<sup>ST</sup> RESPONDENT  
KINONDONI MUNICIPAL COUNCIL.....2<sup>ND</sup> RESPONDENT  
TEMEKE MUNICIPAL COUNCIL.....3<sup>RD</sup> RESPONDENT  
MOROGORO MUNICIPAL COUNCIL.....4<sup>TH</sup> RESPONDENT  
MWANZA CITY COUNCIL.....5<sup>TH</sup> RESPONDENT  
DODOMA MUNICIPAL COUNCIL.....6<sup>TH</sup> RESPONDENT  
TANGA CITY COUNCIL.....7<sup>TH</sup> RESPONDENT  
MPWAPWA DISTRICT COUNCIL.....8<sup>TH</sup> RESPONDENT  
MTWARA MIKINDANI  
MUNICIPAL COUNCIL.....9<sup>TH</sup> RESPONDENT  
MASASI DISTRICT COUNCIL.....10<sup>TH</sup> RESPONDENT  
SONGEA DISTRICT COUNCIL.....11<sup>TH</sup> RESPONDENT**

**RULING**

12<sup>th</sup> November & 14<sup>th</sup> December 2020

**MASABO, J.**

The Applicants (TALGWU) on behalf of 576 persons, being aggrieved by the decision of this court in Misc. Application No. 555 of 2015 are desirous of appealing to the Court of Appeal. As the time within which to file the appeal has lapsed, they have come to this court seeking for leave to file a notice of intention to appeal to the Court of Appeal out of time.

The Application is accompanied by an affidavit deponed by Stephen Mosha who is identified as their counsel. In this affidavit it is deponed that sometimes on 24/2/2015 the Revisionary Panel of the Industrial Court of Tanzania ruled against the applicants. The applicants were disgruntled but they did not appeal within the time. To mend things, they filed an application for extension of time within which to file the notice of intention to appeal to the Court of Appeal in Misc. Civil Application No 555 of 2015. The application ended barren as it was dismissed on 24<sup>th</sup> March 2017 for lack of merit.

The dismissal of the application disgruntled them further. However, they again did not timely challenge it owing to what is stated under paragraph 5 of the affidavit as delay in convening the applicant's Board which is the decision maker on whether or not to pursue the matter further. Having obtained the go ahead, on 26<sup>th</sup> August 2017 they filed an application for extension of time within in which to file the notice of appeal. The said application Misc. Civil Application No. 397/01of 2017 which was filed in the Court of Appeal, was struck out on 16<sup>th</sup> April 2019 for being filed in a wrong court. Upon being furnished with the copy of ruling on 18<sup>th</sup> April 2019, they noticed that there was a discrepancy of dates in the ruling and drawn order. Thereupon, they asked for corrected copies which as of the time of filing this application on 13<sup>th</sup> May 2019 were yet to be received. The application was contested by all the respondents.

Submitting in support of the application, Mr. Stephen Mosha learned counsel, cited **Mary Mchiombe Mwambo & Another v Mbeya Cement Co. Ltd**

(2017) TLS LR 277 and argued that the sequence of events demonstrate that the delay was not occasioned by the applicants negligence as the applicant was waiting for the internal management of the TALGWU to review the decision and opine on whether or not to appeal against it. Further he cited the decision of the Court of Appeal in **Harrison Mandali v The Registered Trustees of the Archdiocese of Dar es Salaam**, Civil Application No. 482/17/2017 (unreported) and proceeded to argue that the time within which the applicant was pursuing the application in the Court of Appeal is excusable.

On their part, Mr. Grayson Orcado and Ms. Mariam Ukwaju, learned solicitors who submitted for and on behalf of all the respondents sternly contested the application. They cited **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015, Court of Appeal of Tanzania at Arusha (unreported) and argued that the application should fail as the applicants have failed to demonstrate a good ground. They argued further that the applicants have failed to account for a period of 117 days from 24<sup>th</sup> March 2017, the date of the decision sought to be appealed against, and 26<sup>th</sup> August 2017 when the applicant filed an application for extension of time in the Court of Appeal. Moreover, it was argued that the fact that the applicants were waiting for internal procedures is not good reason to warrant extension of time. As for the period spent in pursuit of the incompetent application in the Court of Appeal it was argued that this too is inexcusable because, the matter was struck out owing to the applicant's negligence.

I have considered the arguments advanced by both sides. In preface, let me briefly say that, the law with regard to extension of time is highly developed and the applicable principle, are certainly, not difficult to find. The first of such principles is that for expeditiousness and finality of litigations, the rules of procedure prescribing time within which a litigant is to take a certain legal action must be obeyed and strictly complied with. In ***Ratnam v. Kumarasamy*** (1964) 3 All ER 933, it was articulated that: -

“The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step-in procedure requires to be taken, **there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation.** [Emphasis added]

Second, where a litigant is hindered by a valid cause to comply with the time limitation, his right will be protected by provisions vesting in courts of law, discretionary powers to extend the time. In the instant case, such provision is Rule 83(2) the Court of Appeal Rules, 2009 which states that, a person aggrieved by the decision of this court shall file a notice of appeal *within 30 days* of the date of the decision against which it is desired to appeal. Also relevant is section 11 (1) of the Appellate Jurisdiction Act, Cap 141 RE 2019 which states that this Court may extend the time within which to file the notice of appeal.



These powers are discretionary and the exercise of which is predicated upon the Applicant's ability to avail the Court with material facts upon which to exercise the discretion. As stated by the Court of Appeal in ***Benedict Mumello v Bank of Tanzania***, Civil Appeal No 12 of 2012 (unreported) stated that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

Therefore, the paramount consideration in this application is whether or not the Applicant has demonstrated a good cause to warrant the exercise of discretionary powers vested in this court. As there is no universal definition of the term good cause, in determining whether or not a good cause has been established, several factors are taken into consideration and they include; whether the applicant has accounted for all the period of delay, whether the delay is inordinate; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in prosecution of the action; and existence of a point of law or sufficient importance such as the illegality of the decision sought to be challenged (See **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015, Court of Appeal of Tanzania at Arusha (unreported) and **Zahara Kavindi and Another v Juma**

**Swalehe & Others**, Civil Application NO. 4/5 of 2017, Court of Appeal of Tanzania at Mwanza (unreported).

The present application was filed in this court on 13<sup>th</sup> May 2019. Leave is sought to enable the applicant to appeal against the ruling rendered on 24<sup>th</sup> March 2017. The total duration of delay is therefore nearly two years. Undeniably, this is an inordinate delay which cannot be excused in the absence of a good cause. Upon a thorough scrutiny of the affidavit I have observed that the applicants have ably accounted for the period between 26<sup>th</sup> August 2017 when they filed the incompetent application for extension time in the Court of Appeal and 15<sup>th</sup> May 2019 when they filed the instant application. This period is excusable as it partly constitutes what has been termed as technical delay, (see **Fortunatus Masha v. William Shija and Another** [1997] TLR 154).

As for the period of approximately 117 days from 24<sup>th</sup> March 2017, the date of the decision sought to be appealed against and 26<sup>th</sup> August 2017 when the incompetent application was filed in the Court of Appeal, I agree with the respondents that the applicants have miserably failed to account for the delay. The applicants' internal procedures on calling TWALGU Board of Directors Meeting to decide whether or not to appeal, has never been and will never serve as a good cause for extension of time. Accepting such reason would give the litigants an unqualified right to ignore the timetable for conduct of litigation in anticipation to have the litigation conducted at their pace.

Under the premise, in as much as the applicants have ably accounted for the second period of delay, the application can not issue. Accordingly, I dismiss it. The application having arisen from labour matter, I will order no costs.

DATED at DAR ES SALAAM this 14<sup>th</sup> December 2020.



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

**J.L. MASABO**  
**JUDGE**