

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISC. CIVIL APPLICATION NO. 62 OF 2018

(Originating from Civil Case No. 14 of 2000 of the High Court of Tanzania at
Tabora)

TOBACCO TRADERS

COMPANY LIMITED.....APPLICANT

VERSUS

UFULUMA AMCS LIMITED.....1ST RESPONDENT

USESULA AMCS LIMITED.....2ND RESPONDENT

TANZANIA LEAF TOBACCO

CO. AMCS LIMITED.....3RD RESPONDENT

RULING

Date of Last Order: 10/02/2021

Date of Delivery: 19/02/2021

AMOUR. S. KHAMIS, J:

In Civil Case No. 14 of 2000, Tobacco Traders Co. Ltd sued UFULUMA AMCS, USESULA AMCS and Tanzania Leaf Tobacco Co. Ltd for breach of contract and prayed for an order of specific performance and general damages amounting to Tshs. 20,000,000/=.

The trial judge (Songoro, J – as he then was), found the claims were not established and dismissed the suit with costs on 3rd June 2015.

Civil Appeal No. 93 of 2016 lodged by Tobacco Traders Company Limited against the respondents herein, was struck out by the Court of appeal for being time barred.

Miscellaneous Land Case Application No. 86 of 2017 preferred by Tobacco Traders Company Limited in this Court, was struck out on 5/10/2017 for wrong citation of the law.

Determined to seek extension of time to file a notice of appeal against this Court's Judgment in Civil Case No. 14 of 2000, Tobacco Traders Company Limited lodged Civil Application No. 579/11 of 2017 in the Court of Appeal.

On 31st August 2018, the Court of Appeal ruled that for failure to first make the application in the High Court, the mandatory provisions of rule 47 of the Court of Appeal Rules were offended rendering the application incompetent.

The application was thus struck out with costs.

In the present application, Tobacco Traders Company limited, sought an extension of time within which to file a notice of appeal to the Court of Appeal against the decision of this Court in Civil Case No. 14 of 2000.

The application was made by way of chamber summons under Section 11(1) of the Appellate Jurisdiction Act, Cap 141, R.E 2002.

the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.”

It is trite law that extension of time must be for a sufficient cause and cannot be claimed as of right.

In **PRINCIPAL SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICES V D. VALAMBIA, CIVIL REFERENCE NO. 9 OF 1991** (unreported), the Court of Appeal held that in some cases a point of law may be of sufficient importance to warrant extension of time, while in others it may not.

The Court of Appeal in the above cited case further pointed out that:

“.....We think that where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is sufficient importance to constitute sufficient reason within the meaning of rule of the rules for extending time...”

In paragraph 5 of the affidavit in support of the application, Peter Celestin Masanja, the applicant’s Managing Director, deposed that:

“5. That the impugned Judgment has illegality worth determination of the Court of Appeal to wit, the trial judge did not direct his mind on the framed, as the four issues framed at page 4 of the typed judgment are in variance with issues determined by the Court as envisaged at page 11 of the typed judgment.”

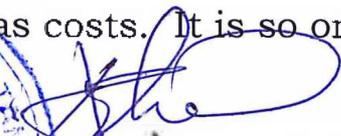
Through the counter affidavit of Faustin Anton Malongo, the third respondent generally disputed the allegation of illegality and contended that the trial judge determined the issues framed.

In my view, the point of illegality raised by the applicant cannot be assessed by this Court. It deserves a consideration by the Court of Appeal. In the result, the application is granted.

Let the applicant file a notice of appeal to the Court of Appeal within fourteen (14) days and a petition of appeal within thirty (30) days from the date of delivery of this ruling.

I make no order as costs. It is so ordered.




AMOUR S. KHAMIS
JUDGE
19/02/2021

Court: Ruling delivered this 19th day of February 2021 in the presence of Applicants Director and Mr. Idrissa Juma, Advocate for the 3rd Respondent but in absence of the 1st and 2nd Respondent.



B.R. NYAKI
DEPUTY REGISTRAR
19/2/2021

Right of Appeal explained fully.




B.R. NYAKI
DEPUTY REGISTRAR
19/2/2021