

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

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 194 OF 2022**

*(Arising from the Decision of the High court of Tanzania - Dar es Salaam District Registry at*

*Dar es Salaam in Civil Case No. 65 of 2018 - Mlacha, J.)*

**TIB DEVELOPMENT BANK..... APPLICANT**

**VERSUS**

**H. H. HILLAL & CO LTD ..... RESPONDENT**

**R U L I N G**

*Last date: 19<sup>th</sup> & 19<sup>th</sup> September, 2022.*

**MWANGA, J.**

The Application is for extension of time for the Applicant to file notice of appeal from judgment and decree of the high court in Civil Case No. 65 of 2018. It was filed under S. 11 (1) of the Appellate Jurisdiction Act [Cap. 141 R.E 2019].

When the matter came for hearing on 19/09/2022, the applicant who sought the order of this court in respect of an application for extension of time to file notice of appeal, did not appear.

On the other hand, the Respondent was represented by Ms. Agnes Nduyepo, learned counsel, who filed counter affidavit on 19/07/2022 but, she asked this court's permission to withdraw the same with no order to



costs. She went further to concedes the application as she considers it meritorious.

The court marked the counter affidavit withdrawn and proceeded to determine the application in question. Since the applicant was not present in court, I examined and considered his chamber summons and affidavit, and found out that, it is a suitable application that warrant extension of time. There is a question of law raised and needs determination by the higher court. That is, the manner and basis on how set off claims were made by the trial court.

I have found credence in the celebrated case of **Lyamuya Construction Co. Ltd Vs Board of Registered of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 [2011] TZCA 4 (03<sup>rd</sup> of October, 2011) TZCA, where the Court held that;

***'As a matter of general principle, it is in the discretion of the court to grant extension of time but that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily'.***

The court went further to prove guidelines that may be followed in the course of determination of an application for extension of time, these are: -



- (a) *The applicant must account for all the period of delay.*
- (b) *The delay should not be inordinate*
- (c) *The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

On the basis of the decision above, I am therefore convinced that this is a fit and just case that warrant extension of time. It is for the above reasons that, I grant the extension of time to the applicant to file notice of appeal as prayed with no order to costs.

The Application shall be filed within 14 days from the date this ruling.

It is so ordered.



  
**H. R. MWANGA**

**JUDGE**

**19/09/2022**

**ORDER:**

Ruling delivered in the presence of Ms. Agnes Ndusyepo, Learned Advocate for the Respondent and in the absence of the Applicant.



  
**H. R. MWANGA**

**JUDGE**

**19/09/2022**