

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA

MISC. CIVIL APPLICATION NO. 55 OF 2023

(Originating from Appeal No. 48 of 2022-23 of Public Procurement Appeals
Authority dated 21st day of July, 2023)

BETWEEN

CHINA ROAD AND BRIDGE CORPORATION.....APPLICANT

VERSUS

- 1. ATTORNEY GENREAL**
- 2. PUBLIC PROCUREMENT APPEALS AUTHORITY**
- 3. TANZANIA NATIONAL ROADS AGENCY**
- 4. M/S SOBERTRA UGANDA LIMITED**

RESPONDENTS

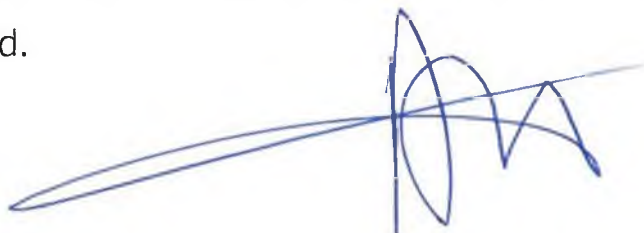
RULING

Date of last Order: 1.11.2023

Date of Ruling: 02.11.2023

A.J.MAMBI, J.

The applicant filed an application seeking for enlargement of time to file judicial review against the decision of the Public Procurement Appeals Authority in Appeal No. 48 of 2022-23 dated 21st day of July, 2023 out of time. In its application supported by an Affidavit the applicant filed an application for extension of time within which to file judicial review to challenge the decision of Public Procurement Appeals Authority. In its application, the applicant has prayed to this court to grant its application as prayed.



During hearing, the applicant was represented by the learned Counsels Mr. Geoffrey and Justine Madenga. On the other hand, the 1st, 2nd and 3rd were represented by the learned State Attorneys led by Omary while the 4th respondent was represented by the learned counsel Mr. Mfuko and Marco Mkumbo.

The applicant counsels briefly averred that the applicant has indicated reasons for the delay in the affidavit of its principal officer. The learned Counsels for the applicant submitted that the reasons for the application are stated under para 6,7,8 & 11 of the affidavit. They argued that they were not aware of the decision of PPAA passed on 21/7/2023. They averred that they just became aware after receiving the letter from TANROAD on 19/9/2023 where they discovered on 20/9/2023 through the TANROAD website that they were already out of time. They submitted that having discovered that they were late, subsequently on 22/9/2023 they filed an application for extension of time to this court.

They averred that during the hearing on 29/9/2023 they noted that the application was defective and they decided to withdraw with leave to refile. The learned counsel further submitted that they re-filed an application on the same date of 29/9/2023. They were of the view that by the time they discovered that there was decision of PPAA to the time when they withdraw, it was a technical delay as they were in court perusing their right. They argued that technical delay is excusable as per the decision of the court in **Hamis Mohamed vs Mtumwa Mosha, Civil Ap. No. 407/17 of 2019 at page 7, & 8.**

The learned Counsels for the applicant further submitted that the other ground for extension of time, is that there was a point of law as found under para 7 & 11 of the affidavit whereby the applicant was considered unheard. They referred the decision of the court in consolidated **Civil Reference No. 6,7 & 8 of 2006 VIP Engineering & Marketing Ltd & others vs. CITI Bank TZ Ltd at page 22** where the court discussed illegality on the part of an applicant being condemned unheard.

The 1st, 2nd and 3rd who were represented by the learned State Attorneys on the other hand, briefly contended that they have not seen any sufficient ground advanced the applicant. Their submission was supported by the learned Counsel for the fourth respondent. They submitted that the claim that the applicant was not aware of the decision of PPAA has no merit. They contended that, the applicant was aware on the proceedings that were at PPAA. They added that the TANROAD wrote the letter to the applicant informing the existence of appeal lodged by 4th respondent.

The learned State Attorneys went on submitting that the counter affidavit under para 8 with annexure SG1 shows that the 3rd respondent notified the applicant on the suspension of tender processing as per the letter of 22/6/20223 as per Regulation No. 10 of Public Procurement Regulation of 2013. They further contended that the regulation requires the contracting authority to notify the bidders on the existence of any complainant. That being the case, they contended, the claim that the applicant were not aware has no merit.

Reference was made to the decision of the court in Lyamuya Construction Co Ltd vs Board of Registered Trustees of Young Woman's Christian Association of Tanzania Civil application No. 2 of 2010 at p.6 &7. The learned State Attorneys went on submitting that the applicant has not counted the days for each delay as they were also given prior notice. They contended further that, the delay was inordinate.

The learned State Attorneys referred this court on section 101 of the Public Procurement Act and submitted that the applicant has no locus since it was not a tenderer. The respondent referred further this court on the case of **the Registered Truste of SOS.. vs Igange & others, Civil Appl. No. 426/08 of 2018 page 7.**

The respondents further averred that, going through para 7 &8 of the affidavit, they don't see a technical delay apart from ignorance of the law. They referred this court to Omar Ibrahim vs Ndege Civil Application No. 83/01 of 2020 page 11.

The respondents counsels submitted that they don't see any illegality although they agree that illegality is a ground of extension of time but it must clearly stated. They contend that, the illegality claimed is not apparent on the records. They submitted that if the applicant was not party how comes they were not given right to be heard. The respondents finalized that, the applicant is seeking extension of time for judicial review which is forum shopping and abuse of court process.

I have keenly gone through the application supported by an affidavit. The main issue to be determined is whether the applicant has advanced sufficient reasons.

In other words, the main legal question to be determined is whether the applicant has properly moved this court in its application and whether there are any good causes for its delay or not.

It is the cardinal principle of law that any party who seeks for an extension of time to file an appeal or application out of time is required to advance sufficient reasons in his affidavit before the court can consider and allow such application. This is the position of the law and case studies. In this regard, I wish to refer the decision of the Court of Appeal of Tanzania in ***REGIONAL MANAGER, TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)***. The court in this case observed that;

"the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted".

The court needs to consider an issue as to whether the applicant in its affidavit have disclosed good cause or sufficient reasons for delay. In other words, the court needs to take into account factors such as reasons for delay. That is where the applicant is expected to account for cause of delay of every day that passes beyond the aforesaid

period. Lengthy of the delay is to be shown that such reasons were operated for all the period of delay.

I also wish to refer the decision of the court in **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI**; Civil Application No 176 of 2015 Court of Appeal of Tanzania at Dar es Salaam (Unreported) underscored that;

"Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

(a) The length of the delay

(b) The reason of the delay – whether the delay was caused or contributed by the dilatory conduct of the applicant?

(c) Whether case such as whether there is a point of law or the illegality or otherwise of the decision sought to be challenged."

Worth also at this juncture referring the decision of the court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc Commercial Cause No. 243 of 2015** (Unreported) where it was held that:

"(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause..."

Looking at the application before this court, the applicant in its affidavit under paragraphs 6, 7, 8 & 11 has clearly indicated that it had sufficient reasons for its delay. My perusal from the records especially affidavit and submission have revealed that the applicant has established that it was unaware with the decision of the PPAA delivered on 21/7/2023. The claim by the respondents that the applicant has not advanced sufficient reason in my considered view, has no merit.

The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant".

Worth also referring to the decision of Court of Appeal in **MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998** in which the court at **Page 425** held that

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the applicant"

will not suffer any prejudice, an extension should be granted.

It should be noted that granting or dis-granting an application for extension of time is in the discretion of the court. I also wish to refer section 14 (1) of the Law of Limitation Act Cap.89 [R.E. 2019] which provides as follows:-

*"14-(1) Notwithstanding the provisions of this Act, the court may, **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than an application for such execution of a decree, and **an application for such extension may be made** either before or after the expiry of the period of limitation prescribed for such appeal or application (emphasis mine)".*


I also wish to refer the decision of the court **REGIONAL MANAGER Supra** where the court observed the following:-

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**"(emphasis supplied).*

In my view the applicant has placed before this court sufficient material that has moved this court to exercise judicial discretion to extend time to file judicial review out of time. I agree with the applicant that it has advanced and presented sufficient reasons for delay and the extent of such delay in its application.


Consequently, I am of the considered view that this application has merit and this court finds proper the applicant to be granted an extension of time to file its judicial review out of time.

This means that the applicant has to file its application to this court within the prescribed time by the law if it wishes to do so.



A. J. MAMBI
JUDGE
02. 11 2023

Ruling delivered in Chambers this 2nd day of November, 2023 in presence of both parties.



A. J. MAMBI
JUDGE
02. 11 2023

Right of appeal explained.



A. J. MAMBI
JUDGE
02. 11 2023