

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

**AT DODOMA**

**MISC. CIVIL APPLICATION NO. 16 OF 2023**

*(Originating from the judgment and decree in DC Civil Appeal No. 2 of 2018  
High Court of Tanzania at Dodoma)*

**BRACK FINANCE LTD.....APPLICANT**

**VERSUS**

**FELIX LARUSAI MUSHI.....RESPONDENT**

**RULING**

*Date of last order 8/4/2024*

*Date of ruling: 16/4/2024*

**KHALFAN, J.**

The applicant preferred the instant application under section 11(1) of the Appellate Jurisdiction Act [CAP 141 R.E 2019], seeking for substantive relief namely, an extension of time within which to file notice of appeal against the decision of this court in DC Civil Appeal No. 2 of 2018. The application is being supported by an affidavit sworn by Mr. Godfrey Wasonga learned advocate for the applicant.

It is on record that the application was disposed of by way of written submission. The applicant duly filed the submission in time, but the



respondent, through his advocate, informed the court he was not contesting the application.

In his submission in support of the application, the learned advocate for the applicant urged the court to grant the prayer sought. He argued that the applicant initially lodged an appeal to Court of Appeal but it was withdrawn for being incompetent. He argued that counting from the date the appeal was struck out to the date the instant application was filed, the applicant acted promptly and there was no delay on his party.

Having considered the applicant's submission, the sole issue for my determination is whether the application has merits.

Although the respondent did not contest the application, yet; the court has to satisfy itself whether the applicant has advanced sufficient reason for the court to exercise its discretion for extension of time. 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 of delay, lack of diligence on the part of the applicant. In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian**



**Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported), the Court of Appeal expounded several factors for consideration if good cause has been shown as follows:

- i. The applicant must account for each day of the delay.*
- ii. The delay must not be inordinate.*
- iii. The applicant must show diligence and not apathy, negligence or sloppiness of action that he intends to take.*
- iv. If the court feels that there are other sufficient reasons such existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged.*

Going by the affidavit in support of the instant applicant, it is not in dispute that the applicant's appeal was withdrawn on 20/4/2023. The applicant contended that the period from 24/4/2023 to 9/5/2023 was spent in making follow up of the copy of withdrawal order of the appeal as well as filing of the instant application.

Looking at the matter at hand, counting from the date in which the appellant's appeal was withdrawn to the date this application was filed; about 17 days lapsed which the applicant has accounted. That, he was



waiting for the copy of the order as well as the preparation and filing of the instant application. Hence, I find such period not inordinate. It is for that reason I find that the applicant has advanced sufficient reason.

Consequently, the applicant is granted a period of 30 days within which to file the notice of appeal. In the circumstance, I will not make an order as to costs.

It is so ordered.



  
**F. R. Khalfan**  
**JUDGE**  
**16/4/2024**