

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISC. COMMERCIAL APPLICATION NO. 191 OF 2022**

**(Arising from Commercial Case No. 15 of 2016)**

**BUCO INVESTMENT HOLDINGS LIMITED.....APPLICANT**

**VERSUS**

**CRDB BANK PLC.....1<sup>ST</sup> RESPONDENT**

**MPALE KABA MPOKI T/A MPOKI AND**

**ASSOCIATES ADVOCATES.....2<sup>ND</sup> RESPONDENT**

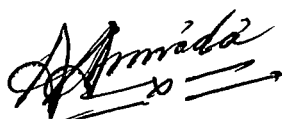
**MICRONIX SYSYSTEM LIMITED.....3<sup>RD</sup> RESPONDENT**

**RULING**

**A.A. MBAGWA J.**

This is an application for extension of time within which to file a notice of appeal against the decision of this Court (Hon. Mwandambo J, as he then was) in Commercial Case No.15 of 2016 delivered on 20<sup>th</sup> February, 2018

The applicant herein **Buco Investment Holdings Limited** ha  
of chamber summons made under section 14(1) of the Law of  
Act, moved this Court for the following orders;



- a) The honourable court may be pleased to extend time within which to refile the notice of appeal against the decision of the court, Mwandambo J (as he then was) in commercial case no.15 of 2016 delivered on 20<sup>th</sup> February ,2018 After the first notice of appeal expired with the withdrawal of civil appeal no.139 of 2019 on 30<sup>th</sup> September 2022 in the court of appeal for want of formal letter from the Registrar of the court notifying parties about readiness of certified proceedings.
- b) The honourable court may be pleased to make such other orders as it may see it fit.

The application is supported by an affidavit sworn by Mr. Emmanuel Joachim Msengezi and supplementary affidavit sworn by Justine Kilenza, the court officer who via email informed the applicant's counsel of the readiness of documents for collection. In contrast, the application was contested through counter affidavits of Deogratias J. Lyimo Kirita, for the 1<sup>st</sup> respondent, and Miss. Dora S. Mallaba, for the 2<sup>nd</sup> respondent.

The background of this application may, in a nutshell, be recounted as follows; on 20<sup>th</sup> February 2019 this Court (Hon. Mwandambo J as he then was) entered judgement in Commercial Case No.15 of 2016 which was substantially in favour of the applicant and partly against her. The applicant was not satisfied with the judgment as such, she duly filed a

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notice of appeal along with application letter for certified copies of the proceedings, judgement, decree, rulings, drawn orders and certified exhibits. Subsequently, the applicant was informed by the Court via email that the relevant documents were ready for collection. Acting on the email communication, the applicant collected the necessary documents and was issued with a certificate of delay. Consequently, she lodged Civil Appeal No. 139 of 2019.

However, on 30<sup>th</sup> September 2022 when the appeal was called for hearing, upon probe by the Court, the applicant learnt that the record of appeal contained a defective certificate of delay. In the result, the applicant prayed to withdraw the appeal with the intention to rectify the anomalies. As such, the matter was marked withdrawn. Since the withdrawal of the appeal also affected the notice of appeal, the applicant has brought this application to re start the appeal process in a bid to challenge the decision of this Court in Commercial Case No.15 of 2016 as alluded to above.

During the hearing of this application the applicant was enjoying service of Mr. Emmanuel Joachim Msengezi, learned counsel, on the one side. On the other side, the 1<sup>st</sup> respondent was represented by Mr. Deogratias Lyimo, learned advocate while 2<sup>nd</sup> respondent appeared through Ms Dora



S. Mallaba, learned counsel. The 3<sup>rd</sup> respondent did not enter appearance nor did it file counter affidavit. The application was argued by the way of written submissions.

Submitting in support of the application, Mr. Emmanuel Joachim Msengezi, learned counsel for the applicant told the court that the applicant should not be allowed to suffer from the mistake committed by an officer of court. He clarified that the defects in the certificate of delay which led to withdrawal of appeal were committed by the Deputy Registrar. To bolster his contention, the applicant's learned counsel referred this court to the cases of **VIP Engineering & Marketing vs Société General De Surveillance (SA) And Another**, Commercial Case No.16 of 2000 (unreported) and **William Getari Kegege vs. Equity Bank and Another**, Civil Application No.24/08 Of 2019, CAT at Mwanza.

In reply, the 1<sup>st</sup> respondent submitted that the applicant has failed to account for each day of delay as the appeal was withdrawn on 30<sup>th</sup> September 2022, and the drawn order thereof was supplied on 5<sup>th</sup> October,2022 but the applicant filed the present application on 22<sup>nd</sup> October 2022. The 1<sup>st</sup> respondent's counsel stressed that the applicant has failed to account for period between 06<sup>th</sup> October 2022 to 19<sup>th</sup> October,2022.

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The 2<sup>nd</sup> respondent, on her part, was opined that the applicant has no good cause to justify extension of time. The counsel continued that there is nowhere the said Justine Kilenza stated that he was authorised by the Deputy Registrar. In addition, counsel for the 2<sup>nd</sup> respondent lamented that the applicant did not account for delay of fourteen (14) days from 6<sup>th</sup> October, 2022 to 20<sup>th</sup> October, 2022. He cited the case of **Tanzania Fish Processors Limited vs. Eusto K Ntagalinda**, Civil Application No. 41/08 of 2018 (Unreported) which quoted with approval the holding in **Bharya Engineering & Contracting Company Ltd vs. Hamoud Ahmed Nassor**, Civil Application No. 342 /01 Of 2017 to the following effect;

*'Despite the foregoing, there is a period from 6/12/2017 when the application for the review was struck out and the time when this application was filed on 21/12/ 2017, which is termed as real or actual delay'. This is a period of about fourteen days which has not been accounted for by the applicant. In his submissions, Mr. Mutalemwa did not explain away this delay. The law is clear that in application for extension of time, the applicant should account for each day of delay.'*

The counsel for 2<sup>nd</sup> respondent thus concluded that the applicant has not advanced the genuine reasons for delay as required by the law hence prayed for dismissal of the application.



In rejoinder, the applicant reiterated his earlier submissions in chief.

Having read the parties' affidavits and upon scanning the submissions made by the counsel for both parties, the issue for determination is one namely, whether applicant has demonstrated sufficient cause to warrant extension of time.

The applicant told this court that she timely filed a notice of appeal in Civil Appeal No. 139 of 2019 but since the certificate of delay was found to be defective, the applicant was compelled to withdraw the appeal.

It is common cause that there is no fast and hard rule as to what constitutes good cause. Rather, sufficient causes are determined by reference to all the circumstances obtaining in particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar Es Salaam.

In this instant matter, it is undisputed that the applicant did not account for delay of fourteen (14) days from 5<sup>th</sup> October, 2022 when she was supplied with the drawn order to 22<sup>nd</sup> October 2022 when she filed this application. However, upon assessment of all the circumstances, it is my findings that the applicant has been diligent in prosecuting his appeal. In the case of **Zuberi Mussa Vs. Shinyanga Town Council**, Civil Application No. 3 of 2007 diligence on the part of the applicant was held



to be a sufficient ground for extension of time. At page 9 of the ruling, the Court of Appeal held;

*"I agree also with Mr. Mtaki that the applicant, who has been in and out of the Court corridors pursuing his case has been diligent in his quest for justice. In the absence of any malafide on his part, the Court cannot shut out its doors to him. In the result, I find and I am satisfied that the applicant has disclosed sufficient reasons for the delay in filing his application for review. He is therefore entitled to the grant of extension."*

In the application at hand, it is undisputed that the withdrawal of Civil Appeal No. 139 of 2019 was caused by a defective certificate of delay which was issued by the Deputy Registrar. Besides, Mr. Justine Kilenza, a court officer sworn a supplementary affidavit acknowledging the mistake. In the circumstances, I find it unfair to punish the applicant for the mistake which was partly contributed by the court officers. **See VIP Engineering & Marketing vs Société General De Surveillance (SA) and Another (supra) and Mount Meru Flowers Tanzania Limited vs Box Board Tanzania Ltd;** Civil Appeal No.260/2018 CAT at Arusha.

All the above said, after taking into consideration of what triggered the withdrawal of Civil Appeal No. 139 of 2019 and considering the promptness of the applicant in filing this application after she was supplied

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with a withdrawal order, I am satisfied that the applicant has demonstrated sufficient caused for this court to grant extension of time.

In fine, I find merits in this application and consequently, I allow the application. The applicant is given ten (10) days from the date of this ruling to file a notice of appeal. Considering the circumstances which led to the filing of this application, I make no order as to costs.

It is so ordered.

Right of appeal is fully explained.



  
A. A. MBAGWA

JUDGE

09/06/2023

**Court:** Ruling has been delivered in the presence Dora Malaba, learned counsel for the 2<sup>nd</sup> respondent who was also holding brief of Emmanuel Msengezi for the applicant and Levis Lyimo for the 1<sup>st</sup> respondent, and in absence of 3<sup>rd</sup> respondent this 9<sup>th</sup> day of June, 2023.



  
A. A. MBAGWA

JUDGE

09/06/2023