

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 356 OF 2022**

<b>FIRIMIN PAUL MGHAMBA .....</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>JAMES CHARLES MANJUA .....</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>MIKIDADI MOHAMED KITUNTWA .....</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>FERDINAND PHILLIP CHAMI .....</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>BAICENT SILING DOTTO .....</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>LUPYANA ALATANGA MSIGWA .....</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>TUMAINI MANASE MARO .....</b>	<b>7<sup>TH</sup> APPLICANT</b>
<b>JOSEPH GERALD MUHENGA .....</b>	<b>8<sup>TH</sup> APPLICANT</b>
<b>AMANI MOHAMED MALUNDA .....</b>	<b>9<sup>TH</sup> APPLICANT</b>
<b>IBRAHIM LUHANGANO CHUNGU .....</b>	<b>10<sup>TH</sup> APPLICANT</b>
<b>DENIS ROBERT LUGINA .....</b>	<b>11<sup>TH</sup> APPLICANT</b>
<b>MASOUD SALIM MBONDE .....</b>	<b>12<sup>TH</sup> APPLICANT</b>
<b>MOHAMED ISMAIL KIGOMGA .....</b>	<b>13<sup>TH</sup> APPLICANT</b>
<b>WILLIAM TAMILWAY HIZA .....</b>	<b>14<sup>TH</sup> APPLICANT</b>
<b>JONAS MESHACK MPANGALLA .....</b>	<b>15<sup>TH</sup> APPLICANT</b>
<b>DEOGRATIAS LAURENT TEMBA .....</b>	<b>16<sup>TH</sup> APPLICANT</b>

**VERSUS**

**TANZANIA BREWERIES LIMITED .....** **RESPONDENT**

**RULING**

*Date of last Order: 14/11/2022*

*Date of Ruling: 28/11/2022*

**B. E. K. Mganga, J.**

On 19<sup>th</sup> September 2022, applicants filed this application seeking the Court to grant extension of time within which they can filed a Notice of Appeal with a view of filing an appeal before the Court of Appeal against

the decision of this Court(S.A.N. Wambura, J as she then was) dated 15<sup>th</sup> October 2019 in Revision No. 129 of 2017.

Submitting on the merit of the application, Masoud Salim Mbonde, 12<sup>th</sup> Applicant submitted that they were late because their Advocate one Tibiita Muganga was sick and he is still sick. When asked by the court as to when the said advocate fell sick, Mr. Mbonde submitted that it was within this year. Mr. Denis Lugina, the 11<sup>th</sup> Applicant concurred with the submissions of the 12<sup>th</sup> applicant and added that they intended to challenge the decision of Hon. Wambura, J, (as she then was ) in Revision No. 177 of 2019 dated 15<sup>th</sup> October 2019. Mohamed Kigomba, the 13<sup>th</sup> applicant, Amani Mohamed, the 9<sup>th</sup> applicant and William Hiza, the 14<sup>th</sup> applicant had nothing new from what was submitted by their co-applicants.

Resisting the application on behalf of the respondent, Mr. Robert Mosi, learned advocate submitted that, applicants filed this application seeking extension of time to file the Notice of Appeal with a view of challenging the Ruling of this Court (Hon.Wambura, J as she then was) in Miscellaneous Application No. 177 of 2019 dated on 15<sup>th</sup> October 2019. Counsel for the respondent submitted further that, applicants have failed to

adduce good reasons for the delay and submitted further that they were negligent. He went on that, submissions that Mr. Tiibita Muganga, Advocate for the applicants was sick, is not reflected in their affidavit in support of the application. Counsel added that it is not true that the said advocate was sick since 2019 and that he is sick is untrue because on 14<sup>th</sup> March 2022, the said Advocate appeared before the Court in Miscellaneous Application No. 11 of 2022 that was struck out. It was submission by Mr. Mosi that there is no proof that the said advocate is or was sick. He went on that, after the decision by Hon. Wambura, J (as she then was), applicants filed four Applications No. 642 of 2019, No. 546 of 2020 and 11 of 2022 all being defective. In all those applications, none of applicants were praying for extension of time to file a notice to appeal to the Court of Appeal. He submitted further that; the last application filed by the applicants was struck out on 14<sup>th</sup> March 2022 but they filed this application on 19<sup>th</sup> September 2022 that is six months thereafter. Counsel argued that applicants have not accounted for each day of the delay and cited the case of ***Lyamuya Construction Company Ltd V. Board of Registered Trustee of Young Women's Christian Association of Tanzania***, Civil

Application No. 2 of 2010, CAT (unreported) to bolster his submissions that applicants were supposed to account for each day of day from 2019 to the date of filing this application.

In rejoinder, the 12<sup>th</sup> applicant submitted that they were informed on 18<sup>th</sup> March 2022 that their advocate was sick. The 11<sup>th</sup> applicant submitted that it is difficult to account for each day of delay because the matter was handled by their Advocate. He conceded that there is no affidavit of the Advocate to the effect that the advocate was sick and that the advocate failed to handle their applications. The 13<sup>th</sup> applicant submitted that he relied on their Advocate ,which is why, they do not know many details. The 9<sup>th</sup> applicant submitted that they were unaware that they were supposed to account for each day of the delay. He also conceded that there is no medical report showing that the said Advocate fell sick. The 14<sup>th</sup> applicant merely concurred with submissions of his co-applicants.

Before I determine this application, I have found it prudent to point albeit briefly that other applicants did not enter appearance and according to the herein applicants, some of the applicants are not in Dar es salaam

and that their attendance cannot be secured. Faced with that reality, I decided to hear those who were present.

I have read the chamber summons and found that applicants are seeking extension of time to file the Notice of Appeal to challenge the decision of this Court(S.A.N. Wambura, J as she then was) in Revision application No. 177 of 2019 that was dismissed on 15<sup>th</sup> October 2019 for being time barred. The record shows that, after dismissal of the said revision, applicants filed miscellaneous application No. 642 of 2019 seeking the Court to extend time within which to file application for leave of representative suit. In the later application, applicants were being represented by Tibiita Muganga, advocate. The said application was struck out on 12<sup>th</sup> August 2020 by Hon. Z. G. Muroke, J in the presence of Tibiita Muganga, advocate for the applicants and Godwin Nyaisa, advocate for the respondent. Applicants did not end there. They filed Miscellaneous application No. 546 of 2020 under section 11(1) of the Appellate Jurisdiction Act[cap. 141 R.E. 2019], at this time, being represented by Godfrey Ambrose, advocate. On 26<sup>th</sup> August 2021, Godfrey Ambrose Advocate prayed to withdraw the said application with a view of filing an

application for extension of time to apply for revision of the CMA award. The prayer was not objected to, by counsel for the respondent, as a result, the court (S.M. Maghimbi, J) marked the application as withdrawn without leave because the court found that the intended application was unrelated with the one withdrawn. Applicants filed miscellaneous application No. 11 of 2022 for extension of time to file an application for revision but the same was dismissed on 14<sup>th</sup> March 2022 (B.E.K. Mganga, J) because the court found itself being functus officio. All these are reflected in court judgment and rulings attached to the affidavit in support of the application.

It is my view that, from the affidavit in support of the application, argument by the applicants that the delay was due to sickness of their advocate one Tibiita Muganga is a cooked story that is unsupported by evidence. More so, as submitted by counsel for the respondent, there is no medical report showing that the said advocate was sick. In addition to that, there is no affidavit of the said advocate to support claims by the applicants. Not only that but also, applicants did not account for each day of the delay from 15<sup>th</sup> October 2019 to the date of filing this application. They were supposed to account for that delay but they didn't. See the case

of **Sebastian Ndaula vs. Grace Lwamafa**, Civil Application No. 4 of 2014, CAT (unreported), [Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another](#), Civil Application No. 278/15 of 2016, CAT, (unreported), [Finca T. Limited & Another vs Boniface Mwalukisa](#), Civil Application No. 589 of 2018) [2019] TZCA 56, [Zawadi Msemakweli vs. NMB PLC](#), Civil Application No. 221/18/2018 CAT (unreported), [Elias Kahimba Tibendalana vs. Inspector General of Police & Attorney General](#), Civil Application No. 388/01 of 2020 CAT (unreported) and **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, CAT (unreported) to mention a few. In **Mashayo's case** (supra), the Court of Appeal held inter-alia that: -

*"...the delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."*

Arguments by the applicant that they were unaware that they were supposed to account for each day of the delay or that they cannot account for each day of the delay, in my view, cannot help them in this application. I am of that view because ignorance of the law has never been and cannot be a ground for extension of time. The fact that they cannot account for

each day of the delay means that they have no good reason or justification for the delay. In my view, applicants filed this application as an afterthought which also cannot be a ground for the court to extend time.

For the fore going, I dismiss this application for want of merit.

Dated in Dar es Salaam on this 28<sup>th</sup> November 2022.



B. E. K. Mganga

**JUDGE**

Ruling delivered on this 28<sup>th</sup> November 2022 in chambers in the presence of Amani Mohamed Malunda, Masoud Salim Mbonde, and William Tamilway Hiza, the 9<sup>th</sup>, 12<sup>th</sup> and 14<sup>th</sup> Applicants and Method Nestory, Advocate for respondent.



B. E. K. Mganga

**JUDGE**