

IN THE COURT OF APPEAL OF TANZANIA**AT DODOMA****CIVIL APPLICATION NO. 10/01 OF 2025****COCA COLA KWANZA LIMITED..... APPELLANT****VERSUS****COMMISSIONER GENERAL, TANZANIA****REVENUE AUTHORITY..... RESPONDENT****(Application for extension of time to file the record of appeal against the decision of the Tax Revenue Appeals Tribunal at Dar es Salaam)****(Ngimilanga, V.C.)****dated the 06th day of June, 2024****in****Tax Appeal No. 55 of 2023****RULING**27th August & 3rd September, 2025**SEHEL, J.A.:**

This is a ruling on an application for extension of time within which to lodge the record of appeal against the decision of the Tax Revenue Appeals Tribunal ("the TRAT") in Tax Appeal No. 55 of 2023. The application is brought by a notice of motion made under the provisions of Rules 10 and 48 (1) of the Tanzania Court of Appeal Rules ("the Rules") and supported by affidavits of Suleina Salim Bitesigirwe, Wilson Kamugisha Mukebezi and Whitney Malanda. The ground upon which the motion is made is that there was a malfunction of the Judiciary of Tanzania electronic Case Management System (JOT e-CMS) from 5th

April, 2025 to 9th April, 2025 and physical filing of the record of appeal was not possible due to the absence of the court of appeal registry officers at Dar es Salaam sub-registry on 8th April, 2025, the last date for filing.

On the other hand, the respondent, through Mr. Trofmo Omega Tarimo, learned legal counsel for the respondent, filed an affidavit in reply to oppose the application.

The background of this matter is that; upon being dissatisfied with the decision of the TRAT, the applicant lodged a notice of appeal in time and also applied to be supplied with proceedings, judgment and decree for appeal purposes. Pursuant to rule 90 (1) of the Rules, on 5th February, 2025, the registrar of TRAT issued the applicant with a certificate of delay excluding days from 11th June, 2024 to 5th February, 2025 in computing the sixty (60) days for filing its appeal. Given the excluded period, the appeal was to be filed on or before 8th April, 2025 as 6th April, 2025 was on Sunday and the Monday of 7th April, 2025 was a public day (Karume's day).

According to paragraphs 6, 7 and 8 of the affidavit of Suleina Salim Bitesigirwa, the record of appeal was ready for electronic filing by 5th April, 2025 but the JOT e-CMS was inaccessible. Therefore, she contacted one of the Court staff, Nelson Allipio, who advised her to seek

assistance from the judiciary IT officers but she failed to get any assistance. She further deposed that, on 7th April, 2025, she received a WhatsApp message from the group of newly admitted advocates that there was a malfunction of the JOT e-CMS. This information, prompted her to contact Whitney Malanda on 8th April, 2025 who promised her to make a follow up but never got back to her. She thus went to the Court's sub-registry at Dar es Salaam to do physical filing only to be told that all officers were at Dodoma attending the inauguration ceremony of the Judiciary's Square. As the 8th April, 2025 was the last date for filing the record of appeal, the applicant lodged the present application on the above stated ground.

At the hearing of the application, Messrs. Wilson Mukebezi assisted by Mahmoud Mwangia, learned advocates, appeared for the applicant, whereas, the respondent had the legal services of Ms. Consolata Andrew, learned Principal State Attorney, assisted by Messrs. Trofmo Omega Tarimo, Michael Taragwa and Akwilila Mrosso, learned State Attorneys.

In his submission in support of the application, Mr. Mukebezi adopted the notice of motion and the supporting affidavits. Essentially, he submitted that on 5th April, 2025, when the applicant tried to upload its record of appeal electronically, it was faced with malfunctioning of the

JOT e-CMS as confirmed by the sworn affidavit of Whitney Malanda, IT officer of the JOT. He asserted that given the efforts taken by the applicant in trying to file the record of appeal in time and the follow up it made with the judiciary staff, the applicant was diligent in pursuing its appeal. He added that even when the applicant tried physically to file the record of appeal at Dar es Salaam, there was no officer to admit it as they were all in Dodoma for inauguration of the Judiciary Square.

He further argued that, given the prevailing circumstances, the delay was technical as it was beyond the applicant's control. He supported his submission that technical delay is a good cause in granting an extension of time by citing the case of **Okech Boaz Othiambo & Another v. Salama Idi Kanyorota** (Civil Application No. 900/15 of 2021) [2024] TZCA 291.

Relying on 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) [2011] TZCA 4, he argued that the applicant had shown good cause and urged the Court to grant the application but costs to abide by the results of the appeal.

Having fully adopted the affidavit in reply, Ms. Andrew strongly opposed the application and gave five reasons. **One**, although Suleina deposed in paragraph 7 of her affidavit that she was advised to seek assistance but it was not shown whether she actually sought any assistance. She just deposed that no assistance was given to her, thus, the assertion cannot be relied upon. **Two**, Suleina deposed in paragraph 9 of her affidavit that she received a text message through WhatsApp group but the sender of the said message was not disclosed nor the time when it was sent, thus, making the deposition unreliable upon. **Three**, the affidavit of Whitney Malanda does not match with the deposition of Suleina. While Whitney Malanda contended that the system was not accepting appeals from TRAT, Suleina deposed there was malfunctioning of the JOT e-CMS. **Four**, given the well-known fact that the JOT e-CMS does not accept appeal arising from TRAT, the technical delay was irrelevant and not applicable to the applicant's situation and **five**, the affidavit of Noel Mosha, mentioned in paragraphs 2, 3 and 4 of the Whitney's affidavit, was not attached to the application to support the assertion.

Further, the learned Principal State Attorney distinguished in facts the case of **Okech Boaz Othiambo & Another v. Salama Idi Kanyorota** (supra) that the Court was dealing with an application for

extension of time to file an application for stay of execution which was previously withdrawn. Whereas, in the application at hand, the applicant has not yet filed the record of appeal. In the end, she asserted that the applicant failed to account for each day of delay and urged the Court to dismiss the application with costs.

The applicant's counsel, Mr. Mukebezi, briefly rejoined that the respondent did not dispute the assertions made by the applicant because it simply noted the deposition made by Suleina and that of Whitney in their affidavit. On the issue of unmatched deposition, it was Mr. Mukebezi's submission that the facts founding in paragraphs 2, 3 and 4 of Whitney's affidavit were meant to establish the type of problem facing the JOT e-CMS as confronted by Suleina. As regards to the argument that there was no affidavit of Nelson Mosha, he rejoined that the annexures A6 and A7 proved there was a call made to Mr. Nelson. In the end, he reiterated his submission in chief and urged the Court to grant the application.

I have considered the notice of motion, the three supporting affidavits, the affidavits in reply and the oral submissions by the parties for and against the application. The issue for determination is whether the applicant has given good cause for the grant of the application as

required under rule 10 of the Rules upon which this application has been pegged. The said rule provides:

"The Court may upon good cause shown extend the time limited by these Rules or by any decision of the High Court or tribunal for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after doing of the act, and any reference in these Rules to any such time shall be construed as a reference to that time so extended."

It is in that respect, times without number, the Court emphasized that a party seeking an extension of time to do any act must show good cause for the Court to grant or refuse it. In **Osward Masatu Mwaizarubi v. Tanzania Fish Processing Ltd** (Civil Application No. 13 of 2010) [2012] TZCA 450, the Court stated that:

"...what constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion..." [Emphasis added].

From the above holding, the power of the Court in extending time is discretionary and depends on the circumstances of each case.

Nonetheless, in ascertaining whether the applicant has advanced good cause, the Court has laid down some factors which may be considered. These are; whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; the lack of diligence on the part of the applicant; the applicant's ability to account for the entire period of delay; and existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged - see the cases of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania** (supra), **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another** (Civil Application No. 6 of 2001) [2004] TZCA 45; **Regional Manager TANROADS, Kagera v. Ruaha Concrete Company Limited** (Civil Application No. 96 of 2007) [2007] TZCA 372 and **Benedict Shayo v. Consolidated Holdings Corporation as Official Receivers of Tanzania Film Company Limited** (Civil Application No. 366/01/2017) [2018] TZCA 252.

In this application, as stated earlier on, the sole ground for extension of time advanced by the applicant was a malfunctioning of the JOT e-CMS. It should be noted that the learned Principal State Attorney had no qualm on the fact that the applicant was issued with a certificate of delay excluding the computation of time from 11th June, 2024 to 5th

February, 2025. As rightly argued by Mr. Mukebezi, the last day for filing the record of appeal fell on 6th April, 2024 which was on Sunday and the next day, that is, the Monday of 7th April, 2024 was a public holiday. Pursuant to Rule 3 of the Rules, Sundays and public holidays are inclusive of the term "*Court vacation*" which is defined to mean:

".... a Saturday, Sunday or a public holiday, including the 15th December to 31st January and from the second Saturday before Easter to the first Tuesday after inclusive, and any other day on which the Registry is closed."

As on the issue of computation of time, rules 8 and 9 of the Rules clearly provides, *inter alia*, that, if the last day from which the act is to be done expires on a day when the Court is closed, that day and any succeeding days on which the Court remains closed shall be excluded in computing the time prescribed by the Rules or fixed by the order of the Court. This means that, the 6th April, 2025 which was on Sunday and the next following day, Monday of 7th April, 2025, was a public day (the Karume day) were public holidays, thus, excluded in computing time for lodging the record of appeal. In the case of **Mechmar Corporation (Malaysia) Berhard v. VIP Engineering and Marketing Ltd** (Civil Application No. 9 of 2011) [2011] TZCA 490, the Court considered the import of rules 3, 8 and 9 of the Rules and held that:

"... we agree with Mr. Tenga that Rule 9 does not in any way point out that court vacation days are to be excluded. It has to be born in mind that during court vacation days the Court registries are open for service. **It is only during Saturdays, Sundays and public holidays where court registries are closed, hence a party cannot be able to file his/her documents.** We do not think that it was ever intended that all court vacation days be excluded from the computation of the period provided for in the Rules..." [Emphasis added]

It follows that, the applicant could not have lodged the record of appeal on those days as the Court registry was closed. Therefore, the lengthy submissions of the Principal State attacking the deposition of Ms. Suleina Salim Bitesigirwa in respect of 5th, 6th, and 7th April, 2025 were uncalled for as the last day for filing the record of appeal was on 8th April, 2025.

Besides, Ms. Andrew acknowledged that JOT e-CMS does not accept appeals arising from the TRAT and the applicant made unsuccessful efforts to file the record of appeal on 8th April, 2025. I say so because, the respondent noted all the assertions made by Ms. Suleina in paragraphs 10, 11, 12 and 13 of her affidavit which read:

"10. That, on Tuesday 8th April, 2025, I contacted Ms. Whitney Malanda who is a judiciary officer that I needed assistance in filing the records of appeal as they were due, and I could not access the filing system she informed me that she will contact a judiciary IT officer to inquire about the filing problem. However, she did not get back to me on time. A photostat of the call log showing I contacted Whitney Malanda is attached as A-8 and leave of this Court is sought to form part of the Affidavit.

11. I state that, on that same day, 8th April, 2025, I went to the Court of Appeal Dar es Salaam sub-registry so that the records could be admitted manually but there was no any officer that could assist me. I was then informed that all the judiciary staff are in Dodoma for the inauguration of the Judiciary's Square ceremony

12. Based on the information above and the failure to lodge the record of appeal on 8th April 2025, the only remaining remedy was to apply for extension of time hence this application. I state that following the failure to lodge the record on 8th April 2025 I promptly started to prepare this application on 9th and 10th April 2025 and on 11th April 2025 I handed it over to my

supervisor who is Mr. Norbert Mwaifwani for review and sign off.

13. On 12th April, 2025, we arranged for travelling to Dodoma in order to obtain an affidavit of the IT personnel from judiciary which is also attached and only managed to obtain it on 14th April 2025 when my colleagues Mahmoud Mwangia and Wilson Kamugisha Mukebezi travelled to Dodoma for filing this application. Copies of the train tickets are attached marked A-9 and leave of this Court shall be craved to make them part of this affidavit.”

From the above uncontested deposition, I am satisfied that the applicant accounted for each day of delay from 8th April, 2025 to 15th April, 2025 when the present application was filed to this Court. I take note that, immediately after realizing the record of appeal could not be filed electronically, the applicant did not sit idle. It take all efforts in trying to file it manually in Dar es Salam but only to find out all officers were in Dodoma for inauguration of the Judiciary's Square. In the circumstances, I am of the considered view that at all times the applicant acted diligently to pursue the intended appeal. Although I agree with Ms. Andrew that the case of **Okech Boaz Othiambo & Another v. Salama Idi Kanyorota** (supra) is irrelevant to the matter at hand, I

find that there was a technical delay of malfunctioning of the JOT e-CMS. In that, the JOT e-CMS does not accept appeals from TRAT.

In the upshot, I am satisfied and find that the applicant has shown good cause warranting the extension of time. Consequently, the application is hereby granted. For avoidance of doubt, given that the record of appeal was ready for filing, the applicant is given fourteen (14) days from the date of this ruling to file it in Court. Costs in this application shall abide the outcome of the intended appeal. It is so ordered.

DATED at **DODOMA** this 2nd day of September, 2025.

B. M. A. SEHEL
JUSTICE OF APPEAL

The Ruling delivered this 3rd day of September, 2025 in the presence of Mr. Mahmoud Mwangia, learned counsel for the Applicant and Trofmo Tarimo, learned State Attorney for the respondent via virtual Court and Fahmi Karemwa, Court Clerk; is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL