

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

CIVIL APPLICATION NO. 785/01 OF 2024

ERISTIC (T) INVESTMENT LIMITED..... APPLICANT

VERSUS

COMMISSIONER GENERAL FOR

TANZANIA REVENUE AUTHORITY (TRA).....1ST RESPONDENT

**(Application for extension of time to file Memorandum and Record of
Appeal out of time arising from the Judgment and Decree of the Tax
Appeals Tribunal, at Dar es Salaam)**

(Kamuzora, Vice-Chairperson)

Dated 28th day of May, 2021

in

Tax Appeal No. 48 of 2020

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RULING

25th August & 3rd September, 2025

FIKIRINI, J. A.:

This application is brought under Rule 10 of the Court of Appeal Rules, 2009 ("the Rules"), in which the Applicant, Eristic (T) Investment Limited, seeks an extension of time to lodge a Memorandum and Record of Appeal against the decision of the Tax Revenue Appeals Tribunal (the TRAT) delivered on 28th May, 2021.

The application is supported by an affidavit sworn by the Applicant's Managing Director, dated 19th March, 2024, and a written submission filed on 13th January, 2025. In the affidavit, the deponent advances two grounds: (i) that the intended appeal raises serious issues of illegality; and (ii) that the delay was caused by the prolonged illness of the Managing Director, who suffered an acute hemorrhagic stroke and remained incapacitated for a considerable period.

The Respondent has filed both an affidavit in reply and a written submission in response. During the hearing, both parties adopted their filed documents to be part of the argued application.

Before examining the merits of the application, it is prudent to provide a brief overview of the background. The Applicant, a company engaged in the importation of spare parts, was subjected to a post-clearance audit covering the years 2012 - 2015. The audit resulted in a tax demand amounting to TZS 8.56 billion, comprising import duty, value added tax (VAT), and railway levy. The Applicant challenged the assessment before the Tax Revenue Appeals Board (the TRAB) and subsequently appealed to the Tribunal in Tax Appeal No. 48 of 2020. However, the Tribunal upheld the assessment in favour of the Respondent.

Dissatisfied with the outcome, the Applicant filed a notice of appeal on 10th June, 2021, and requested certified copies of the proceedings, judgment, and decree. These were provided on 24th August, 2021, along with a certificate of delay excluding seventy-four (74) days. The Applicant was required to lodge its memorandum and record of appeal by 22nd October, 2021.

Regrettably, before the deadline expired, the Managing Director suffered a sudden stroke, necessitating hospitalization both locally and abroad, followed by an extended recovery period. It is deposed that this medical condition rendered him unable to issue instructions for the timely pursuit of the appeal.

The present application was eventually filed on 14th November, 2024, accompanied by medical records, travel documentation, and submissions asserting that there are apparent illegalities in the impugned decision. These include:

- (a) The Tribunal's acceptance of a time-barred request for tax records, contrary to section 235 (1) of the East African Community Customs Management Act, 2004 (EACCMA);

- (b) The endorsement of an arbitrary flat rate of 25% duty, in violation of section 110 (1) of the same Act; and
- (c) An interpretation of section 235 (3) that introduces consequences not contemplated by Parliament.

When the application was called for hearing on 27th August, 2025, Mr. Dickson Majaliwa, learned counsel, appeared for the applicant, while Messrs. Thomas Buki and Amon Meja, learned State Attorneys, represented the respondent.

To commence proceedings, the counsel for the Applicant, in his oral submission, argued that while the Applicant awaited the provision of the proceedings and certificate of delay, the Managing Director, who oversees the Applicant's decision-making, particularly in financial and tax matters, suffered a severe illness. This illness, he contends, rendered the Managing Director incapacitated and unable to issue timely instructions to pursue the appeal.

The learned counsel, further asserts that the Tribunal's decision is vitiated by apparent illegalities, including: (a) condoning a time-barred request for tax records, contrary to section 235 (1) of the EACCMA; (b) upholding an arbitrary flat rate of 25% duty, in contravention of section

110 (1) of the EACCMA; (c) misinterpreting section 235 (3) of the EACCMA by imposing consequences not provided for in the statute—specifically, applying the “best judgment” rule due to failure to produce records; alongside other related points. He thus prayed for the grant of the application.

In response, the learned State Attorney conceded that illness may constitute sufficient grounds for extension of time. However, he argued that in the present application, the medical evidence submitted only accounts for six (6) days of hospitalization, from 16th to 22nd August, 2022, at the Aga Khan Hospital, leaving the majority of the delay unexplained. He further contends that the annexed visas and travel documents are inadequate in the absence of corresponding medical reports from the foreign hospitals visited. Additionally, he underscores that the Applicant, being a corporate entity with multiple directors, could have proceeded through alternative leadership and that the retained law firm continued to hold instructions throughout.

On the issue of illegality, the learned State Attorney submitted that the alleged errors pertain to statutory interpretation and require detailed factual analysis and legal argumentation. As such, they do not constitute apparent illegalities that would justify an extension of time. He implored

the Court to decline the grant of the application and dismiss it with costs.

In rejoinder, the counsel for the Applicant stressed that the medical documentation demonstrates continued incapacity following discharge, including clinic visits and ongoing medication, which collectively account for the entire period of delay. He reiterated that the Managing Director was solely responsible for financial and tax-related decisions, and his recovery was essential for issuing instructions. Regarding the alleged illegalities, the counsel maintained that these are patent errors on the face of the record and do not necessitate extensive deliberation.

Before delving into the merits of the application, it is pertinent to note that applications of this nature are governed by Rule 10 of the Rules. The Rule vests the Court with discretionary powers to grant or deny an extension of time. While this discretion is broad, it is not absolute; it must be exercised judiciously, guided by established principles, including the length and reasons for the delay, diligence in acting or lack thereof, and the degree of prejudice to the opposing party.

These principles have been reaffirmed in numerous decisions of this Court, notably in **VIP Engineering and Marketing Ltd & Two Others v. Citibank Tanzania Ltd** (Consolidated Civil References No. 6, 7 & 8 of 2006) [2007] TZCA 165 (26 September 2007; TANZLII), and **Tanga Cement Co. Ltd v. Jumanne D. Masangwa & Another** (Civil Application No. 6 of 2001) [2004] TZCA 45 (8 April 2004; TANZLII) to list a few.

It was submitted that the Applicant's Managing Director suffered an acute haemorrhagic stroke, necessitating Intensive Care Unit (ICU) care and prolonged treatment across multiple jurisdictions between 2021 and 2023. He reportedly resumed meaningful control of corporate affairs only in August 2024, as evidenced by a consultant neurologist's report annexed to the affidavits.

Since he was the sole decision-maker and overall in charge of the Applicant's affairs, no undertakings falling under him could be managed, as the Applicant was unable to issue instructions or finalize the record due to the Managing Director's incapacitation. Although the certificate of delay excluded only 74 days, yet the state of the Managing Director's health was all these time at issue. Counsel further submitted that

serious illness, when substantiated, has been recognized by the Court as sufficient cause for extension.

Illness is indeed an accepted and fact-sensitive ground, provided it is supported by credible evidence that is linked to the delay. Otherwise, the overarching principle remains that the Applicant must demonstrate diligence and account for the entire period of delay with specificity. This position is well illustrated in **Mathayo Noah Sangingo v. Republic** (Criminal Application No. 55/02 of 2024) [2024] TZCA 1078 (8 November 2024; TANZLII), **Filson Mushi v. Jitegemee SACCOS Ltd** (Civil Application No. 313/05 of 2021) [2023] TZCA 17421 (18 July 2023; TANZLII), and **Hamisi Ally Kwembe v. Siamini Markus Komba & Others** (Civil Appeal No. 647 of 2024) [2025] TZCA 670 (1 July 2025; TANZLII). In the latter case, the Court held:

"...Illness may, in appropriate cases, amount to sufficient cause. However, the burden rests on the appellant to prove this fact by producing credible and detailed medical evidence."

On accounting for each day of the delay, the Court had strictly spelt that a delay of even a day must be accounted for. This was emphasized in **Bushiri Hassan v. Latifa Lukio Mashayo** (Civil

Application No. 3 of 2007) [2008] TZCA 220 (22 April 2008; TANZLII), and **ZET Construction Co. Ltd v. Kalokora Bwasha & Cecilia Boniface Shiyo** (Civil Application No. 314/01 of 2022) [2024] TZCA 197 (19 March 2024; TANZLII).

Applying the relevant principles to the present case, it is evident that although the Applicant attributes the delay to illness, the supporting documentation only credibly confirms hospitalization for a brief period at the Aga Khan Hospital. There is a notable absence of sufficient medical records to substantiate continuous incapacity throughout the entire claimed timeframe of 2021 to 2023. Furthermore, the annexed visas and travel documents merely verify travel activity and, on their own, fail to establish that the Managing Director underwent medical treatment or was rendered incapable of performing his official duties.

In the absence of medical reports from the hospitals where he was allegedly treated, the travel documents are of limited probative value. As rightly argued by the Respondent, this leaves a substantial portion of the delay unexplained. Even assuming medical evidence were available, I remain unconvinced that the period following the certificate of delay, from late 2021 through 2023, and the interval between resumption in August 2024 and filing in October 2024, is not inordinate.

Additionally, mindful that the Applicant is a corporate entity, and as such, the Court reasonably expected some demonstration that no other director could have acted in the place of the Managing Director during his incapacitation. One might wonder how possible and practical it would be for the company to function without any of the directors managing the finances and tax portfolios. All considered, it remains that the Applicant had furnished no proof to support this assertion. In the circumstances, the claim cannot be regarded as *bona fide* or materially persuasive. Hence, this ground fails.

On the other ground of which the Applicant alleged illegalities, five grounds became apparent on the following basis:-

- a) That the Tribunal wrongly accepted a request for records made after the five-year limit from the date of importation, contrary to section 235 (1) EACCMA;*
- b) That the tribunal ignored the 5% duty rate and upheld an unlawful flat rate of 25%, contrary to section 110 (1) EACCMA;*
- c) That the tribunal improperly introduced a "best judgment" rule instead of applying section 235 (3) EACCMA on failure to produce documents;*

- d) That the tribunal condoned tax by inference in the absence of records requested outside the statutory five-year limit; and*
- e) That the tribunal misinterpreted section 235 (1) EACCMA by counting the five-year period from the audit period instead of from the date of importation.*

From the listed grounds, the counsel for the Applicant argued that the intended appeal raises points of law of sufficient importance and that a credible allegation of illegality is, by itself, a sufficient reason to extend time, relying on the Court's line of authority that treats illegality as a special factor.

The governing principle is settled that while the Applicant ordinarily must account for each day of delay, a credible point of illegality or a point of law of sufficient importance may, in an appropriate case, justify enlargement even where delays are otherwise substantial.

The Court has reiterated the proposition in its innumerable decisions including **Chandrakant Joshubai Patel v. Republic** [2004] TLR 2018; **Zainul Naushad Fazal v. Zulfikal Pyall Shamji & Another**, (Civil Application No. 582/04 of 2022) [2024] TZCA 287 (30 April 2024; TANZLII), **Interbest Investment Company Limited v. Standard Chartered Bank T. Limited**, (Civil Application 523 of 2018) [2022]

TZCA 550 (31 August 2022; TANZLII) and **Zuhura Salum Mohamed v. Azania Bank Limited & 4 Others**, (Civil Application No. 138/17 of 2023) [2025] TZCA 780 (24 July 2025; TANZLII). In all these decisions, the Court acknowledged illegality as a recognized ground but cautioned that it must be apparent on the face of the record and not a mere invitation to re-appraise evidence.

Gauged against those guideposts, the five discrete complaints enumerated by the Applicant are squarely questions of statutory construction and limitation under the EACCMA, 2004, specifically sections 110 and 235. They are not mere disputes of weight or credibility; they concern whether the Tribunal applied a flat rate outside the statutory scheme and whether a request for documents beyond five years could lawfully ground adverse inferences. Those are quintessential legal issues that, if borne out, may taint the decision with illegality. On balance, I am of the opinion that the illegality ground raises bona fide, arguable points of law of sufficient importance to justify the Court's intervention at the threshold.

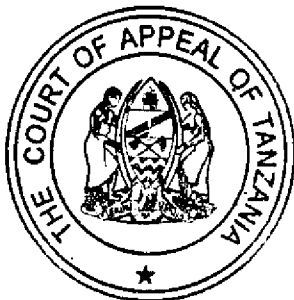
Notwithstanding the explanation of illness advanced, falling short of being wholly convincing, the Applicant has raised points of illegality of sufficient weight.

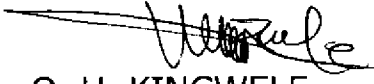
In the foregoing, I conclude that the application discloses good cause; hence, I grant the extension of time as prayed. The Applicant is to lodge her memorandum and record of appeal within thirty (30) days from the date of this order.

DATED at DODOMA on this 3rd day of September, 2025.

P. S. FIKIRINI
JUSTICE OF APPEAL

Ruling delivered this 3rd day of September, 2025 in the presence of Mr. Michael Olotu, learned counsel for the Applicant, Mr. Amon Meja, learned State Attorney for the Respondent via virtual Court and Mariam Kivuma, Court Clerk; is hereby certified as a true copy of the original.




O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL