

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 82/01 OF 2024

GEITA GOLD MINING LIMITED.....APPLICANT

VERSUS

THE COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY.....RESPONDENT(An application for enlargement of time to file an application for review
of Court of Appeal Judgment and Decree in Civil Appeal No. 9 of 2019)(Mugasha, Ndika and Levira, JJA.)dated the 10th day of June, 2020

in

Civil Appeal No. 9 of 2019

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RULING*31st July & 13th August, 2025***KITUSI, J.A.:**

This is an application for extension of time to apply for review. It is made under rule 10 of the Court of Appeal Rules, 2009 and supported by an affidavit of Dr. Alexander Thomas Nguluma, learned advocate. When the application came for hearing it was Dr. Nguluma who argued it on behalf of the applicant and he was that his is the only affidavit.

The background of the matter is a dispute over allegation by the applicant that it is entitled to some specified tax incentives outlined in an agreement known as Mining Development Agreement (MDA) between it

and the government. That claim was rejected by both the Tax Appeals Tribunal on first instance and the Tax Appeals Tribunal on first appeal, holding in their view, that when interpreted, the MDA required the applicant to withhold 15% opposed to 3% of the gross amount of payment for technical and management services.

Dissatisfied, the applicant appealed to the Court Civil Appel No. 9 of 2019 but nothing came out of it as on 10th June, 2020, the Court dismissed the appeal. The position remained that way for some time until, according to paragraph 5 of Dr. Nguluma's affidavit, on 26th January, 2024 when the applicant engaged the learned counsel's law firm to critically read the judgment of the Court in Civil Appeal No. 9 of 2019. In the course of doing so, Dr. Nguluma identified errors in the interpretation of the Income Tax Act, 2004 and accordingly advised his client, the applicant, to prefer a review of the decision of the Court in Civil Appeal No. 9 of 2019. Upon further instructions, the learned advocate proceeded to institute this application to pave way for the intended application for review, on ground of manifest error on the face of the record.

One Hospis Maswanyia, learned Senior State Attorney took an affidavit in reply opposing the application. The affidavit in reply presents two main points for consideration. The first is that there is no manifest error on the Court' decision. The second is that the applicant has always been represented by seasoned advocates and tax constants, so there is no explanation why it took up to 2024 to discover the alleged illegality, and manifest error committed in 2020.

Dr. Nguluma had written submissions but also addressed me orally. The respondent appeared through four learned attorneys from the state bar. These were Ms. Hadija Senzia and Mr. Carlos Mbingamno, learned Principal State Attorneys, Mr. Andrew Francis and Ms. Jane Mgaya, learned Senior State Attorneys. It was Ms. Senzia who addressed me on the application.

Addressing the issue whether the applicant has advanced good cause for the delay, Dr. Nguluma relied on the decision of the Court in **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application No. 6 of 2001 [2004] TZCA 131, to make a point that the term good cause is not explicitly defined. In view of that, even illegality in the decision intended to be impugned is good cause.

For illegality, the learned counsel cited the celebrated decision in the case of **The Principal Secretary Ministry of Defence and National Service v. Devram Valambhia** [1992] T.L.R. 387 **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 case of **The Attorney General v. Emmanuel Marangakis and 3 Others**, Civil Application No. 138 of 2019 (unreported) was also cited. In that case a period of 8 years had lapsed before the applicant moved to apply for extension, and was granted. By analogy, the learned counsel would have this application be granted because the lapse of time of four years is relatively shorter.

In response, it is submitted in writing by the State Attorneys that in order to succeed on illegality, the same must be apparent on the face of the record, and must be of sufficient importance. Ms. Senzia was insistent on the reputation and known ability of the law firm of Dr. Nguluma which represented the applicant in all stages and argued that it cannot be successfully stated that the applicant lacked the requisite prior knowledge on the matter.

The learned Principal State Attorney sought to distinguish the facts of this case from those in **Emmanuel Mwangakis** (supra) because in the latter case, the Attorney General who applied for extension of time, was not a party to the original proceedings therefore unaware of what was going on.

What is glaring, and Dr. Nguluma was candid to concede to this, there is no explanation for the delay of close to 5 years between the date of the decision in 2020 to 26th January, 2024 when the applicant hired Dr. Nguluma during which the applicant took no action. There is only Dr. Nguluma's affidavit but considering the decisions of the Court on affidavits of advocate on matters which they have no knowledge on, counsel's affidavit does not explain the period prior to 26/1/2024. In **Lalago Cotton Ginnery and Oil Mills Company Ltd v. The Loans and Advances Realizations Trust (LART)**, Civil Application No. 80 of 2002 [2003] TZCA 71, it was stated:

"An advocate can swear and file an affidavit in proceedings in which he appears for his client, but on matters which are in the advocate's personal knowledge only".

That case was cited in **Tanzania Breweries Limited v. Herman Bildad Minaja**, Civil Application No. 11/18 of 2018 (unreported).

While I agree with Dr. Nguluma that an advocate does not have to prove the fact that he was engaged by a party, the affidavit asserting that fact has evidential value and amounts to proof of that fact. However, that is just as far as it concerns the period from 26th January, 2024 when Dr. Nguluma's law firm was engaged to the date of filing this application. On the authority of **Lalago Cotton Ginnery** (supra) Dr. Nguluma has no personal knowledge of what took place between the date of judgment, 10th January, 2020 to 26th January, 2024 therefore this period remains stackly unaccounted for. In terms of reasons for the delay, the application lacks merit. The case of **Marangakis** (supra) cited by Dr. Nguluma is distinguishable because unlike in this case the applicant was not a party in the precious case.

Another point is that of illegality. For this ground to succeed, it has to pass the test, the obvious one being that the point must be that which can be spotted easily by a person who runs and reads. This is the settled position in **Derram Valambhi** (supra) & **Lyamuya Construction** (supra).

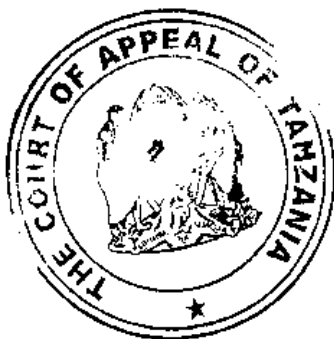
In my view, the points of illegality being raised by the applicant are, at most, decisional errors on the interpretation of the MDA and Income Tax Act, 2004. They do not, in my judgment, pass the test referred to above. To that end, I find no merit in the contention of existence of illegality.


For the reasons discussed, this application is dismissed with costs.

DATED at DAR ES SALAAM this 12th day of August, 2025.

I. P. KITUSI
JUSTICE OF APPEAL

The Judgment delivered this 13th day of August, 2025 in the presence of Ms. Nuru Ally Mwaruka, learned counsel for the applicant and Mr. Andrew Francis, learned State Attorney for the respondent, is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL