IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: KEREFU, J.A., MDEMU, J.A., and MANSOOR, J.A.)

CIVIL APPEAL NO. 378 OF 2024

SGS TANZANIA SUPERINTENDENCE CO LTD .....APPELLANT

VERSUS

COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY.....RESPONDENT

(Appeal from the Decision of the Tax Revenue Appeals Tribunal at Dar es Salaam)
(Mjemmas, Chairperson.)

Dated the 20th day of November, 2023
in
Tax Appeal No. 118 of 2021

JUDGMENT OF THE COURT

7th & 25th November, 2025

KEREFU, J.A.:

The appellant, SGS Tanzania Superintendence Co. Ltd, is challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) in Tax Appeal No. 118 of 2021 which was decided in favour of the Commissioner General, Tanzania Revenue Authority (the TRA), the respondent herein.

As per the record of appeal, this matter originated from the decision of the Tanzania Revenue Appeals Board (the Board) in Application No. 24 of 2020. In that application, which was lodged under

section 7 and 16 (5) of the Tax Revenue Appeals Act, [Cap. 408 R:E 2019] (the TRAA), the appellant unsuccessfully applied for extension of time within which to lodge and serve, on the respondent, a notice of the intention to appeal against the decision of the TRA issued on 29th November, 2019 in respect of VAT assessment for the years 2012 to 2016. The appellant also sought leave to lodge the statement of appeal against the said assessment out of time. It was the averment of the applicant in the affidavit in support of the application that, on 29th September, 2018, the respondent served her with a notice of an assessment for additional VAT due with debit No. 440443581 for the years 2012 to 2016. The said tax assessment reflected a total VAT liability of TZS 9,133,612,796.56.

On 31st October, 2018, the appellant filed an objection on the said assessment. Subsequently, on 31st May, 2019, the respondent responded to the appellant's objection whereas, it maintained its previous position on most of the objected items. Then, the respondent and the appellant exchanged several correspondences to iron out their differences on the matter. Thus, on 19th November, 2019, the respondent issued its final determination on the appellant's objection by maintaining its position. However, on 26th November, 2019, the respondent issued an adjusted

assessment for additional VAT due with debit No. 442700379 to the tune of TZS 4,055,304,268.00 for the years 2012 to 2015.

Dissatisfied, on 9th January, 2020, the appellant lodged an appeal before the Board vide Tax Appeal No. 16 of 2020. However, before determination of the said appeal, the appellant, in its letter dated 3rd March, 2020 and received by the Board on 5th March, 2020, prayed to withdraw the appeal on the ground that the adjusted assessment which was the subject of the tax dispute, had been amended to take

into account errors caused by wrongful computation of interest amount. Consequently, on 6th March, 2020, the Board marked the said appeal to have been withdrawn.

Again, on 27th March, 2020, the appellant wrote another letter to the Board seeking to withdraw its previous letter dated 3rd March, 2020 with a view to reinstate its appeal i.e Tax Appeal No. 16 of 2020 by amending the statement of appeal thereat on account that, at the time of writing its second letter (dated 27th March,2020) to the Board, the appellant was unaware that the Board had already acted on its previous letter and marked the appeal withdrawn. That, the appellant became aware that the said appeal was marked withdrawn on 2nd July, 2020 upon having instructed its lawyer to peruse the file of the appeal at the

Board. Upon the said perusal, the said lawyer found that the appeal was marked to have been withdrawn on 6th March, 2020. That, the delay in filling and serving the notice of appeal and the statement of appeal was not caused by the appellant's inaction or willful neglect rather, it was caused by the delay in receiving the Board's order marking the appeal withdrawn. Thereafter, the appellant, on 6th July, 2020 filed an application for extension of time before the Board as indicated above. Therefore, before the Board, the appellant submitted three reasons for the delay **one**; that, she was not aware with the withdrawal order until 2nd July, 2020; **two**, that, the delay involved was not actual but technical which amounts to a reasonable cause warranting grant of extension of time as decided in the case of **Akonaay Sidawe v. Lohay Baran**, Civil Application No. 25/02 of 2016 [2017] TZCA 1189; and **three**, the delay was partly caused by engaging a lay person, at initial stages, to prosecute the appeal.

The respondent resisted the application as he contended that the appellant failed to demonstrate good cause for extension of time. That, the appellant, after withdrawing the said appeal, ought to have acted diligently and timely in pursuing his fresh appeal. The respondent thus distinguished the case of **Akonaay Sidawe** (supra) relied upon by the appellant by arguing that, facts and circumstances in that case are not

relevant to the appellant's application. That, the technical delay in **Akonaay's** case was due to the High Court's failure to supply the applicant with the copy of the ruling in time and therefore the applicant could not file revision without attaching the decision of the court while in the application before the Board, the applicant (the appellant herein), on 3rd March, 2020 successfully prayed to withdraw the appeal. That, the appellant was at liberty to file a fresh appeal subject to the Tax Revenue Appeals Act and the Law of Limitation Act. It was the argument of the respondent that, the nature of the delay which resulted from the appellant's own prayer to withdraw the appeal, cannot be conveniently termed as a technical delay. That, the appellant's delay was caused by lack of diligence and omission to take reasonable steps in pursuing its appeal. Thus, the respondent prayed for the appellant's application to be dismissed with costs.

In its decision, the Board, having been satisfied that the reasons advanced by the appellant did not constitute good cause warranting extension of time, decided the application in favour of the respondent. Specifically, the Board, at pages 414 to 415 of the record of appeal, observed that:

> *"...as per the Board's record; prayer for withdrawal was made on 3rd March, 2020, but the applicant became aware*

of the withdrawal order on 2nd July, 2020, admittedly more than four months. This is certainly evidencing the inaction and lack of due diligence on the part of the applicant in making follow up of what he prayed for, especially, that prayer for nullification of the withdrawal letter, because, if he would made follow up, he would have discovered about the withdrawal on 27th March, 2020 when he presented his letter for nullification of the prior letter of withdrawal, and he have not shown any reason as to why he did not make follow up. Under the circumstances, we are of the candid view that the applicant was the cause of its own peril and is not justified to blame anyone as she did not act diligently."

Having made the above observations, the Board, at page 416 of the same record concluded that:

"It is our view that the applicant failed to give reasonable cause to convince this Board to grant extension of time, and from there, we regret to say that the applicant has to suffer the consequences. Also, the applicant, in his submissions sought lenience of this Board showing that at first instance had the services of a lay person, as we have already said earlier, this is one of the features that prove that the applicant was not diligent in dealing with this matter. It is trite that ignorance of law is not an excuse, that is to say the applicant is required to follow the law and not to seek for sympathy."

Aggrieved, the appellant appealed to the Tribunal where the Board's decision was upheld as the Tribunal also found that the appellant has failed to advance good cause for extension of time. For the sake of clarity, the Tribunal at pages 711 to 712 of the record of appeal held that:

> *"As correctly observed by the Board, since the appellant was the one who sent a request or prayer to withdraw their appeal (with no leave to refile) then, it was their duty to make follow up to see what happened to their prayer. Failure to do that shows lack of diligence...Two, again, as correctly observed by the trial Board, had the appellant been diligent enough they would have discovered or become aware of the withdrawal order on 27th March, 2020 when they presented their letter to nullify the withdrawal request. It is not clear why they did not bother to ask for the outcome of their withdrawal prayer before presenting their nullification...four, as regards the argument by the appellant's counsel that initially they used services of a lay person, we agree with the Board's observations that that shows lack of diligence in dealing with the case..."*

Therefore, the Tribunal, like the Board, dismissed the appellant's appeal. Undeterred, the appellant lodged the current appeal with one ground which boil down to one main complaint that, '*the Tribunal erred*

in law in holding that the appellant did not show reasonable cause for grant of extension of time within which to lodge the notice of intention to appeal and to file a statement of appeal to the Board in terms of section 16 (5) of the TRAA."

At the hearing of the appeal, the appellant was represented by Mr. Stephen Axwesso, learned counsel whereas the respondent was represented by Mr. Thomas Buki, learned Senior State Attorney assisted by Messrs. Trofmo Tarimo, Chizaso Minde and Taragwa Michael Nyang'anyi, learned State Attorneys. It is noteworthy that, all parties had earlier on lodged their respective written submissions in support of and in opposition to the appeal. Therefore, during their oral submissions, they adopted their written submissions and by way of emphasis, highlighted some of the points which they considered to be of vital importance in support of their positions.

Submitting in support of the appeal, Mr. Axwesso faulted the Tribunal for failure to find that the appellant's delay was technical as opposed to actual delay. He contended that, it is undisputed fact that, the appellant initially filed its appeal within time, but before the same was heard, and upon the appellant's request, it was marked withdrawn on 6th March, 2020. That, the appellant requested to withdraw the appeal with a view to lodge a fresh appeal to accommodate the adjusted

assessment, issued by the respondent on 20th February, 2020, which was the subject of the tax dispute. It was his argument that the Tribunal failed to consider that the delay involved was technical as without the newly issued assessment, the appellant could not have withdrawn its initial appeal. That, since the appellant became aware of the withdrawal order on 2nd July, 2020 and immediately lodged an application for extension of time on 6th July, 2020 it acted promptly and diligently in pursuing the appeal. To support his proposition, he cited the cases of **Fortunatus Masha v. William Shija & Another** [1997] T.L.R. 154, **Benedict Shayo v. Consolidated Holding Corporation as Official Receivers of Tanzania Film Company Limited**, Civil Application No. 366 of 2017 [2018] TZCA 252 and **Akonaay Sidawe** (supra). He then urged us to find that the appellant's delay was technical as opposed to actual delay.

Mr. Axwesso also faulted the Tribunal for failure to invoke the rule of natural justice and accord the appellant the right to be heard as the same would not have jeopardized the respondent. He then insisted that the Tribunal was required to take note that the delay was partly caused by engaging a lay person at the initial stages of the appeal thus, for the interest of justice, the appellant was supposed to be afforded its right to be heard. That, the Tribunal was required to invoke the overriding

objective principle to do away with legal technicalities and ensure effective administration of justice. On this, he referred us to the cases of **National Housing Corporation v. Etienes Hotel**, Civil Appeal No. 10 of 2005 [2005) TZCA 82 and **DRTC Trading Company Ltd & Another v. Juma Masoud**, Misc. Civil Application No. 739 of 2017 (unreported). Based on his submission, he urged us to allow the appeal, quash and set aside the decision of the Tribunal and the subsequent orders thereto.

In response, Mr. Minde, who addressed the Court on behalf of his colleagues, declared the respondent's stance of not supporting the appeal. He then argued that, the Tribunal was correct to dismiss the appellant's appeal on account of failure by the appellant to advance good cause for the delay which was inordinate (four months) and the appellant failed to account for the delay of each day. To support his proposition, he cited **Dar es Salaam City Council v. S. Group Security Co. Ltd**, Civil Application No. 234 of 2015 [2016] TZCA 641.

Mr. Minde also challenged the submission made by his learned friend that the appellant's delay is technical. He contended that, the nature of the appellant's delay in filling a fresh appeal from a withdrawn order occasioned by the appellant herself, cannot be conveniently termed as a technical delay. That, the delay involved in this appeal was caused by lack of diligence and omission to make close follow up on the

matter and take reasonable steps on the part of the appellant in pursuing the appeal. To buttress his argument, he cited the case of **Akonaay Sidawe** (supra).

He further challenged the argument of his learned friend on the application of the principle of overriding objective in this appeal. He clarified that, it is now settled that the overriding objective principle cannot be applied blindly to offend a clear provision of the law. He argued that, since the issue of time limitation goes to the root of the matter, it cannot be rescued by the overriding objective principle. To support his argument, he cited the case of **SGS Societe Generale De Surveillance Sa & Another v. VIP Engineering & Marketing Limited & Tanzania Revenue Authority**, Civil Appeal No. 124 of 2017 (unreported). He thus implored us to dismiss the appeal with costs for lack of merit.

In a brief rejoinder, Mr. Axwesso reiterated his previous submission and insisted for the appeal to be allowed.

On our part, having examined the record of the appeal and considered the submissions made by the parties, we are settled that, the issue for our determination is on whether the appellant had advanced

good cause to enable the Tribunal to exercise its discretion to extend time sought by the appellant.

Before embarking on the determination of the said issue, we wish to state the general principle that an appellate court cannot interfere with the exercise of the discretion of the lower court or tribunal, unless it is satisfied that the respective decision was made on a wrong principle or that certain factors were not taken into account. We find it apt at this point to refer to **Mbogo and Another v. Shah** [1968] 1 EA 93, a decision of the erstwhile Court of Appeal for East Africa, which has been cited and applied in numerous decisions of this Court. The relevant passage is as per Sir. Clement de Lestang VP at page 94 thus:

> *"I think it is well settled that this Court will not Interfere with the exercise of its discretion by an inferior court unless* ***it is satisfied that the decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.***" [Emphasis added]

The above principle has been restated in numerous decisions of the Court. See for instance, **Pangea Minerals Limited v. Gwandu Majali,** Civil Appeal No. 504 of 2020 [2021] TZCA 414, **TCCIA Investment Company Limited v. Dr. Gideon H. Kaunda**, Civil Appeal No. 310 of 2019 [2022] TZCA 599 and **SGS Societe Generale De Surveillance Sa & Another v. VIP Engineering & Marketing Limited & Tanzania Revenue Authority** (supra). Therefore, in determining this appeal, we shall be guided by the same, as it is equally applicable to the instant appeal which is also questioning the Tribunal's exercise of its discretion.

Our starting point is section 16 (3) of the TRAA which prescribe time limit of forty-five (45) days for filling an appeal before the Board from the date on which the notice of final determination of assessment of tax or any other decision by the Commissioner General was served to the appellant. Furthermore, sub-section (5) of the same section set conditions for the grant of extension of time. For clarity, section 16 (5) of the TRAA provides that:

> *"The Board or Tribunal, may extend the limit of time set under subsection (3) or subsection (4) of this section if it is satisfied that the failure by a party to give notice of appeal, lodge an appeal or to effect service to the opposite party*

was occasioned by ***absence from the United Republic, sickness or other reasonable cause****, subject to such terms and conditions as to costs as it may consider just and appropriate."*

It is settled law that courts or tribunals can only grant extension of time, if the appellant shows reasonable or sufficient cause. In **Shanti v. Hindocha & Others** [1973] E.A. 207, the Erstwhile Court of Appeal for East Africa considered a phrase, "reasonable" and or "sufficient cause" and defined the same to mean the cause which is convincingly beyond the applicant's control, that is to say:

> *". . the more persuasive reason . . . that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason."*

Some of the factors which may be taken into account in considering whether or not the applicant has shown good cause were stated by the Court in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania,** Civil Application No. 2 of 2010 [2011] TZCA 4, where the Court developed factors to be looked at when considering good cause for extension of time, that: (i) the applicant must account for all the period of delay; (ii) the delay should not be inordinate; (iii) the applicant must

show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and (iv) if the Court feels that there are other reasons, such as existence of a point of law of sufficient important, such as the illegality of the decision sought to be challenged.

In the instant appeal, it is on record that, before the Board and Tribunal, the appellant advanced three reasons for the delay **one**; that, having written a letter on 3rd March, 2020 requesting for withdrawal of its appeal, the appellant was not aware with the Board's withdrawal order issued on 6th March, 2020, until 2nd July, 2020; **two**, that, the delay involved was technical; and **three**, the delay was partly caused by engaging a lay person, at the initial stages of the appeal.

Starting with the first and second reasons for the delay, there is no dispute that the appellant initially filed its appeal within time, but before the same was heard and on account of the appellant's prayer vide its letter dated 3rd March, 2020, the said appeal was marked withdrawn on 6th March, 2020. It is also not in dispute that the appellant requested to withdraw the appeal, with a view to lodge a fresh appeal, to accommodate the adjusted assessment issued by the respondent on 20th February, 2020. This is in terms of the appellant's letter attached to the

affidavit in support of its application (SGS-4), found at page 340 of the record of appeal. Therefore, it is clear to us that, on 3rd March, 2020 when the appellant prayed to withdraw its appeal, the said adjustment were already issued by the respondent on 20th February, 2020. However, and before making a follow up on its request to withdraw the appeal, the appellant, again, on 27th March, 2020, wrote another letter seeking to nullify its previous request and reinstate the withdrawn appeal. Worse still, the appellant, four more than four months, did not make any close follow up on the matter, until 2nd July, 2020, when it discovered that its appeal was marked withdrawn by the Board on 6th March, 2020.

We are mindful that, in his submission, Mr. Axwesso by relying on our previous decisions in **Fortunatus Masha v. William Shija** (supra), and **Akonaay Sidawe** (supra) faulted the Tribunal for failure to find that the delay involved in this appeal is technical, because the appellant's initial appeal was timely filed but withdrawn due to the adjusted tax assessment by the respondent. While we agree with Mr. Axwesso on the settled position of the law on technical delay obtained in the said decisions, we hasten to remark that, the appellant's delay in this appeal cannot be termed as technical delay. We find solace, on this stance, in our previous decision in **Fortunatus Masha v. William Shija** (supra), where, upon being confronted with an akin situation, we stated that:

> *"A distinction had to be drawn between cases invoiving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that* ***the original appeal was lodged in time but had been found to be incompetent for one or another reason*** *and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted."* [Emphasis added].

See also **Akonaay Sidawe** (supra) and **Salvanda K.A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006 (unreported).

Therefore, and being guided by the above authorities, it is clear that, under normal circumstances, technical delay is the time used by a party to prosecute a suit or an appeal which later is found to be incompetent. In the instant appeal, although, the initial appeal was withdrawn on the account of the appellant's prayer, we may as well consider the first segment of the delay, i.e from 9th January, 2020 when the appeal was lodged to 6th March, 2020 when it was marked withdrawn, as a technical delay, because the said appeal was still before the Board.

However, as for the period from 6th March, 2020 to 2nd July, 2020, we agree with Mr. Minde that the nature of delay, in this segment, cannot be conveniently termed as a technical delay. It is our settled view that, the appellant having prayed to withdraw its initial appeal on 3rd March, 2020 to reflect the adjusted tax assessment issued by the respondent on 20th February, 2020, ought to have acted diligently and timely in pursuing its fresh appeal. Since that was not done, as after it submitted its request on 3rd March, 2020, the appellant stayed idle for almost four months without any follow up of the matter, we agree with Mr. Minde that the Tribunal was correct to find that the delay was caused by lack of diligence and inaction on the part of the appellant. In addition, and as correctly found by the Tribunal, in the affidavit in support of the application, the appellant did not account for the entire period of the delay as required by the law. As intimated above, in an application for extension of time, the applicant is required to account for the delay of each day. Indeed, the Court has reiterated this position in numerous cases – see for instance the cases of **Bushiri Hassan v. Latifa Lukio Mashayo,** Civil Application No. 3 of 2007, **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 04 of 2014 and (both unreported).

Since in the instant appeal, the appellant failed to account for the delay of each day in lodging its appeal, the Tribunal could not have exercised its discretion to grant extension of time sought. To be entitled to an extension of time, the appellant was required to avail before the Tribunal reasonable and sufficient material to show not only that she took actions after the withdrawal order, but also that she acted promptly and diligently to take the actions in order to convince the Tribunal to exercise its discretion to grant extension of time sought.

As for the third reason, we agree with the submission made by Mr. Minde that the appellant's inaction and omission cannot be cured by the principle of overriding objective as suggested by Mr. Awesso, as the issue of time limitation goes to the root of the matter. In this regard, we are guided by our previous decisions in **Njake Enterprises Limited v. Blue Rock Limited and Another,** Civil Appeal No. 69 of 2017 [2018] TZCA 304, **Mondorosi Village Council and 2 Others v. Tanzania Breweries Limited and 4 Others,** Civil Appeal No. 66 of 2017 [2018] TZCA 303 and **SGS Societe Generale De Surveillance Sa & Another** (supra), that the overriding objective principle cannot be applied blindly against the mandatory provisions of the procedural law which goes to the very foundation of the appeal.

In totality and having considered the appellant's reasons advanced before the Board and the Tribunal, we agree with the arguments advanced by Mr. Minde that the Tribunal properly directed itself to the relevant facts of the appeal and correctly applied principles of the law in arriving at its decision that good cause was not shown to justify the enlargement of time that had been prayed for.

In the circumstances, we do not find cogent reasons to vary the decision of the Tribunal. Consequently, we hereby dismiss the appeal in its entirety with costs.

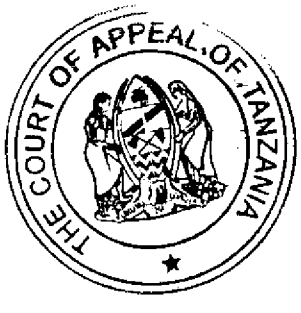
DATED at **DODOMA** this 25th day of November, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

G. J. MDEMU
JUSTICE OF APPEAL

L. A. MANSOOR
JUSTICE OF APPEAL

The Judgment delivered virtually this 25th day of November, 2025 in the presence of Ms. Suleina Salum, learned counsel for the Appellant, Mr. John Mwacha, learned State Attorney for the Respondent and Leopord Mabugo, Court Clerk, is hereby certified as a true copy of the original.



F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL