

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

CIVIL APPLICATION NO. 08/01 OF 2025

**TANGA CEMENT PUBLIC LIMITED COMPANY APPLICANT
VERSUS**

COMMISSIONER GENERAL (TRA) RESPONDENT

**(Application for extension of time to lodge the record of appeal against the
Judgment and Decree of the Tax Revenue Appeal Tribunal at Dar es Salaam)**

(Ngimilanga, Chairperson)

**dated the 31st day of May, 2024
in
Tax Appeal No. 57 of 2023**

RULING

27th August & 9th September, 2025

LILA, J.A.:

By way of a notice of motion made under rule 10 and 48 of the Tanzania Court of Appeal Rule, 2009 (the Rules), the Court is moved to grant an extension of time to lodge a record of appeal against the judgment and decree of the Tax Appeals Tribunal (the TAT) in Tax Appeal No. 57 of 2023. It is supported by an affidavit of Suleina Salim Bitesigirwa. No affidavit in reply came from the respondent, Commissioner General Tanzania Revenue Authority.

Before coming to this Court, the applicant who had already lodged a notice of appeal on 11/6/2024 against the decision of the TAT in Tax Appeal No. 57 of 2023, first requested for and was supplied with the proceedings, judgment, decree by the TAT and the certificate of delay which excluded the period from 11/6/2024 to 5/2/2024 in calculating the sixty days for filing an appeal in terms of rule 90(1) of the Rules. The time for lodging the appeal was therefore to expire on 6/4/2025. Although the record of appeal was ready for filing on 5/4/2025, according to the depositions in supporting affidavit, the applicant could not meet the deadline for reasons well-articulated in paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 which show the chronology of tireless steps taken by the applicant. In essence, the delay is attributed to the Judiciary of Tanzania Electronic Case Management System (JoT-eCMS) system failure. The relevant paragraphs run thus:

"7. I state that on 5th April the (JoT-eCMS) system was not accessible. I contacted an officer of the Court named Nelson Allipio who informed me to seek assistance from the judiciary IT team. A photostat of my call log showing I contracted Nelson on 5th April

2025 is attached as A-6 and leave of this Court is sought to form part of the Affidavit.

- 8. I further state that I did not get any assistance from any of the Judiciary officers, or the IT officials and I continued to try uploading the documents over the weekend on 6th and on 7th April 2025 but failed.*
- 9. I state that on Monday 7th April 2025, which was a public holiday, I received a message from the newly admitted advocates WhatsApp group which indicated that there was a system problem in accessing the judiciary online filing platform (Jot-eCMS). A photostat of the WhatsApp message is attached as A-7 and leave of this Court is sought to form part of the affidavit.*
- 10. That on Tuesday 8th April 2025, I contacted Ms. Whitney Malanda who is a judiciary officer that I need assistance in filing the records of appeal as they are due, and I cannot access the filing system. She informed me that she will contact a judiciary IT officer to inquire about the filing problem, she however could 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, April 8th 2025, I went to the Court of Appeal Dar es Salaam sub-registry so that the records can 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 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 is 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. Wilson Kamugisha Mukebezi 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 any only managed to obtain it on 14th April 2025.

14. I further state that I could not approach the Deputy Registrar for exemption due unavailability or unaccessibility of the e-CMS, as the Deputy Registrar as all the registrars are now situated in Dodoma."

Comprehensively considered, the applicant raised technology failure as a ground for the delay hence prayed for the grant of extension of time to lodge a record of appeal.

Before the Court for hearing of the application were Mr. Wilson Kamugisha Mukebezi and Mr. Mahmoud Mwangia, both learned advocates, who represented the applicant company and Ms. Jane William, learned Senior State Attorney who was assisted by Mr. Yohana Willian Ndila and Mr. Hemed Said Mkomwa, both learned State Attorneys who represented the respondent.

Aware of the legal position that failure to lodge a reply affidavit precludes a respondent from disputing all factual matters deposed in the supporting affidavit hence a concession thereof, Mr. Ndila informed the Court that they would resist the application on matters of law only that, based on the facts deposed by Ms. Suleina Salim Bitesigirwa, no good ground has been advanced by the applicant to warrant the Court exercise its discretion to grant the extension of time sought citing the Court's recent pronouncement in the case of **Joef Group Tanzania Limited vs Somzy International (T) Limited**, (Civil Application No. 349/01 of 2024) [2025]

TZCA 796, TANZLII (31 July 2025) in which the case of **Decortech Tanzania Ltd vs Zenithsys Space Co. Ltd** (Civil Application No. 379 of 2019) [2019] TZCA 512, TANZLII (7 October 2019) was cited.

Having realized that the facts deposed in the supporting affidavit have been legally uncontested, Mr. Mukebezi's job was somehow made simple as he utilized his time to simply distinguish the circumstances that obtained in the two cited cases by Mr. Ndila which culminated in the refusal to grant extension of time to the circumstances of this case as expressed in the above recited paragraphs. He insisted that, in terms of Rule 10 of the Rules, the Court's discretion to grant extension of time is exercisable where the applicant has shown good cause for the delay and as the cause of delay is explained in the uncontested facts that the efforts to lodge the record of appeal were hampered by the Court's online system of filing the documents failing from 5/4/2025 when the applicant was ready to lodge them to 8/4/2025, then the Court should find that the delay was caused by such technical problem which was beyond the applicant's control. He distinguished such circumstances and those in **Joef Group Tanzania Limited vs Somzy International (T) Limited** (supra) where the advocate who had custody of the appeal documents being engaged in

another matter in court for the two last days of lodging the appeal and secondly that the option of filing online was taken belatedly hence failed due to system failure. According to him the option of filing physically was not available as there were no court clerks in the Registry in Dar es Salaam. He contended that due diligence was exercised by the applicant as opposed to that exhibited in the **Joef Group Tanzania Limited vs Somzy International (T) Limited** and **Decortech Tanzania Ltd vs Zenithsys Space Co. Ltd cases** (supra). Two days which remained, according to him, were enough to lodge the record of appeal if not for the system failure. He insisted that efforts to lodge began early before deadline and the applicant had a right to lodge it any time before 6/4/2025.

Mr. Ndila was quite opposed to Mr. Mukebezi's contentions. Heavily relying on pages 4 to 6 of the court's ruling in **Joef Group Tanzania Limited vs Somzy International (T) Limited case** (supra), he energetically argued that the applicant was to blame herself for not taking steps much earlier before the 5/4/2025 because she had sixty (60) days to lodge the record of appeal. Instead, he remarked, the applicant acted within the two last days expecting all will be well which tendency was

censured by the Court in the two cited cases and the applications for extension of time were accordingly refused.

In his rejoinder submission, Mr. Mukebezi reiterated his former submission and urged the Court, on the basis of the circumstances advanced in the supporting affidavit, to grant the application.

We need not cite an authority to fortify the settled legal stance that, under Rule 10 of the Rules, advancing good cause is the yardstick used by the Court to exercise its mandate of granting extension of time. Good cause, though not defined in the Rules, depends on the circumstances of each particular case. (See **Emanuel R. Maira vs The District Executive Director Bunda District Council**, Civil Application No.66 of 2010 (unreported). Good cause, therefore, generally refers to an objectively accepted reason obstructing or impeding one's efforts from taking certain expected steps timely. It is a draw back towards timely action as prescribed by law.

In the present case, I have considered the sequence of steps taken by the applicant in attempting to lodge the record of appeal as evidenced by the photocopies of a scanned folder showing a complete record of

appeal and the call log photostat of a WhatsApp message annexed to the supporting affidavit. They amply prove that efforts to lodge the record of appeal began on 5/4/2025, that was two days before expiry of the prescribed period of lodging the record of appeal. As precisely acknowledged by both counsel, had it not for the JoT – eCMS system failure, the applicant would have successfully and timely lodged the record well within time.

The issue to be resolved is whether the applicant has advanced good cause for delay. Mr. Ndila blames the applicant for not being diligent enough to start the process of lodging the record of appeal much earlier than 5/4/2025 and supports his arguments by the two cited cases. I have keenly read them. Truly, in the two cases the Court was disturbed by the advocate who worked at the last days of the time for lodging the required documents when sufficient time is granted by the Rules to the parties to take actions. In **Joef Group Tanzania Limited vs Somzy International (T) Limited case** (supra), the Court considered the conducts exhibited by the two counsel, Mr. Elly Mwambona and Mr. Missana and the online filing system failure as grounds for the delay by the applicant. It found them

unacceptable and refused to grant extension of time. For the former ground, the Court held:

*"Although during his submissions Mr. Misky did not clearly bring out this point, it is meet that I address it upfront. In the first place, the affidavit of Mr. Missana is silent as to what exactly needed him and him alone to execute the filing of the memorandum and record of appeal, bearing in mind that the applicant is a company. If it was the preparation of the memorandum of appeal, it is not clear why he had to do it himself and why he could not do so after the hours of the said court sessions. If it is the lodging of the memorandum and record of appeal, why was it necessary for Mr. Missana to personally do it? **It is therefore my finding that the applicant has given an insufficient account for the delay.**"* (Emphasis added)

In fact, it was after the above finding that the Court considered, as a secondary issue, the need for taking steps early instead of at the eleventh hour citing the case of **Decortech Tanzania Ltd vs Zenithsys Space Co. Ltd cases** (supra). The case was therefore principally decided on the basis of the counsel's failure to act reasonably. Other concerns of the Court were, therefore, serious advises to the parties not to wait until the last

moments so as to act as they are prone to facing or assuming unexpected risks.

In the instant case, as was rightly argued by Mr. Mukebezi, the situation was different. The record of appeal was ready for filing two days before the prescribed time for lodging it lapsed. Ordinarily, and the parties' counsel agree on this, such time was enough to lodge the record of appeal. Online system failure occurred unexpectedly and there was no other option of lodging the record of appeal. System failure occurrence was a non-issue it having not been controverted by the respondent by way of an affidavit in reply. I am minded to remind the respondent that electronic filing of documents is not optional but a must. Rule 8 of the Judicature and Application of Laws (Electronic Filing) Rules (Henceforth the Electronic Filing Rules), provides for the procedure for electronic filing of documents and it imperatively requires various court documents to be filed electronically. It provides:

*"all pleadings, petitions, applications, **appeals and such other documents shall be filed electronically in accordance with these Rules.**"* (Emphasis added)

It is, in terms of Rule 10(3) of the Electronic Filing Rules, only with leave of the Registrar or the Magistrate in – charge that a document, part of a document or any class of documents may be filed, served, delivered or otherwise conveyed other than by using the electronic filing system. In paragraph 14 of the supporting affidavit the applicant made it clear that there was no Registrar to assist in Dar es Salaam then. The applicant, therefore had no such option hence succumbed to the situation.

The online JoT- eCMS, being the only preferred means of lodging a document in Court, is therefore, in terms of the Electronic Filing Rules, required to be reliable, active, easily accessible and user friendly as well as supportive of the filing process and the responsible authority is bound to ensure its efficiency. It would therefore be unfair to condemn a *bonafide* user who, due to the system failure, fails to lodge a document electronically timely. The Court firmly acknowledged the fact that, in such circumstances, a party cannot be blamed or punished for a fault not of his own making in

Indo-African Estate Ltd vs District Commissioner for Lindi District and Three Others, Civil Application No. 12/07 OF 2022 (unreported) where the Court having considered and realized that the applicant acted diligently but for the inadvertent mistakes by the Registrar to avail a correct

record of appeal, he was delayed, the Court refrained from throwing the blames to the applicant by condemning him for the delay and granted extension of time. It held that:

*"If the Registrar could have availed a correct record of appeal with well-prepared documents, all these confusions could not have happened. In the premise, I find no reason to penalize the applicant for the mistake that was beyond his control. In the circumstances, I am persuaded by the finding of my sister Kimaro, JA, (as she then Was), in **Tanzania Revenue Authority v. Tango Transport Company Ltd**, Civil Application No. 5 of 2006 when she considered an application for extension of time to lodge a notice of appeal and noted that, the delay was caused by the mistakes done by the Registrar. At pages 10 - 11 of the Ruling Justice Kimaro observed that:*

*"In my considered opinion **if the Court denies this application it will amount to penalizing the applicant for a mistake done by the Court itself. This will cause grave injustice on the part of the applicant** who under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977 is entitled as of right to appeal against the decision of the High Court.... it will not be in the interest of justice*

to deny him his right of appeal on this basis because taking such a position would amount to give an unjust decision. I say so because the Court, through its Registrar was the source of the problem...The role of the courts is to meet out justice and not to deny justice to parties because of its own mistakes" [Emphasis added].

In the application at hand, I am satisfied that the applicant has sufficiently established that the cause and source of the delay to lodge a record of appeal was the online JoT-eCMS failure. Efforts to file the record of appeal began two days before time for filing expired. The chronology of efforts demonstrated by the applicant is a proven fact that the delay was not attributed to any dilatory conduct on her part. The applicant, therefore, bears no blame for the delay. I would, by analogy to the course taken by the Court in **Indo-African Estate Ltd vs District Commissioner for Lindi District and Three Others** and **Tanzania Revenue Authority v. Tango Transport Company Ltd** (*Both supra*), in the circumstances, follow suit and hold that the JoT – eCMS failure was not the applicant's making. The applicant has, therefore, advanced a good reason for the

delay in lodging the record of appeal and I hereby grant the extension of time sought.

By way of an advice to the concerned authority, to avoid delays in the event of a system failure on a certain date particularly close to the expiry of prescribed time for taking a certain action, end of the week or public holidays as was the case herein and hence doing away with the need to apply for extension of time, invoke the exclusion of certain days as stipulated under Rule 8 of the Rules, should establish a system that will allow a party to lodge documents any time and any day by submitting them on line and such system should be able to acknowledge submission by producing a certificate showing the date of submission pending admission by the Registrar on the date the court resumes business. Production of a control number for payment of Court fees for civil matters may then follow. And, if the document is admitted by the Registrar, the date of the certificate be taken as the filing/lodging date and the Registrar should endorse so on the document submitted and fees paid. In the event of online JoT - eCMS failure, the system, as is the case with ordinary mobile messages and Bank's ATM services, should be able to produce a notification

of the date of unsuccessful attempt to lodge a document a copy of which a party may produce in Court to support his application for extension of time.

In the end and for reasons stated above, the applicant is granted fourteen (14) days of the delivery of this order within which to lodge a record of appeal. Bearing in mind that lodgment of the application was triggered by the Court's online JoT- eCMS failure, each party shall bear its own costs in this application.

It is so ordered.

DATED at **DODOMA** this 4th day of September, 2025.

S. A. LILA
JUSTICE OF APPEAL

The Ruling delivered this 9th day of September, 2025 in the presence of Mr. Mahmoud Mwangia, learned counsel for the Applicant, Mr. Yohana Ndila, learned counsel for the Respondent via virtual Court and Nise Mwasalemba, Court Clerk; is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL