

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

CIVIL APPLICATION NO. 782/01 OF 2024

TANZANIA ELECTRIC SUPPLY COMPANY
LIMITED (TANESCO)..... APPELLANT

VERSUS

COMMISSIONER GENERAL, TANZANIA
REVENUE AUTHORITY (TRA)..... RESPONDENT(Application for extension of time against the decision of the Tax
Revenue Appeals Tribunal at Dar es Salaam)(Ngimilanga, Vice Chairperson)dated 26th day of October, 2023

in

Consolidated Application Nos. 26 and 27 of 2023

.....

RULING27th August & 11th September, 2025**SEHEL, J.A.:**

This is a ruling on an application for extension of time within which to lodge a memorandum and the record of appeal against the decision of the Tax Revenue Appeals Tribunal (the TRAT) in Consolidated Tax Application Nos. 26 and 27 of 2023. The application is brought by a notice of motion made under the provisions of Rule 10 of the Tanzania Court of Appeal Rules ("the Rules") and supported by an affidavit of Roselian Jackson, the applicant's tax consultant from the Ernest & Young. The grounds upon which the motion is made are that: **One**, the

decision was tainted with illegality; **two**, the decision relied on unknown and unavailable documents to the applicant, thus, the applicant was denied a right to be heard and **three**, there was a technical delay as the certificate of delay issued to the applicant did not take into account the days spent by the applicant waiting to be supplied with it.

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

The background of this matter is that; in the year 2020, the respondent conducted a comprehensive tax audit on the tax affairs of the applicant including a review of income tax on employees salary payment under the Pay As You Earn (PAYE) mechanism and Skills Development Levy (SDL) for the years of income from 2016 to 2019. Following the audit, the respondent issued to the applicant two tax debit notices; namely; debit notice number 49630303869 claiming for underpaid PAYE amounting to TZS. 62,648,053,827.00 of which TZS. 50,788,106,891.00 was the principal amount and TZS. 11,859,946,936.00 was accrued interest. Debit notice number 496303930 for underpaid SDL amounting to TZS. 4,307,058,177.00 of which TZS. 3,783,935,925.00 was the principal amount and TZS.

523,122,252.00 was accrued interest. The applicant was not satisfied with the assessment. It successfully filed two separate appeals to the Tax Revenue Appeals Board (TRAB) trying to challenge the PAYE's and SDL's assessments through Income Tax Appeal No. 324 of 2022 and Income Tax Appeal No. 325 of 2022 respectively.

Pursuant to rule 26 (2) of the Tax Revenue Appeals Board Rules of Government Notice (G.N.) No. 217 of 2018, any aggrieved party is required to lodge a notice of intention to appeal to the TRAT within fifteen (15) days from the date on which the impugned decision was delivered. It happened that the respondent was late in filing its notice of appeal. It thus filed two application, namely; Application No. 26 of 2023 and Application No. 27 of 2023 before the TRAT seeking for an extension of time to appeal against TRABs' decisions. TRAT consolidated the two application as one, to wit, the Consolidated Application Nos. 26 and 27 of 2023, the subject of the present application. After hearing the parties submissions for and against the application, TRAT was satisfied that the respondent advanced good cause to warrant extension of time. It thus granted the respondent fourteen (14) days within which to lodge its notice of appeal.

Aggrieved by such decision, the applicant lodged the notice of appeal and applied to be supplied with the proceedings, ruling and drawn order for appeal purposes. Pursuant to rule 90 (1) of the Rules, on 31st May, 2024, TRAT's registrar (the Registrar) supplied the applicant with the requested documents of the proceedings, ruling and drawn order without a certificate of delay. Upon receipt of the documents, on 25th June, 2024, the applicant wrote a letter to the Registrar requesting to be issued with a certificate of delay which was supplied on 20th September, 2024 but dated 17th September, 2024. The said certificate excluded days from 22th November, 2023 to 29th May, 2024 when the applicant was notified that the requested documents were ready for collection. Initially, the applicant tried to seek for rectification of the certificate of delay by writing several letters to the TRAT. Since no response was forthcoming, it decided to lodge the present application on 7th October, 2024.

At the hearing of the application, Mr. Steven Urassa, learned advocate and Principal Legal Officer of the applicant, appeared for the applicant, whereas, the respondent had the legal services of Ms. Juliana Ezekiel, learned Principal State Attorney, assisted by Mr. Andrew Kombo, learned State Attorney.

When given a chance to argued the application, Mr. Urassa fully adopted the contents of the notice of motion, supporting affidavit and written submissions filed on 5th December, 2024. He had nothing to add.

Essentially, on the issue of illegality, relying on the authority stated in the cases of **Okech Akomo v. Konsilata Adoyo** (Civil Application No. 625 of 2022) [2022] TZCA 810 and **Ngao Godwin Losero v. Julius Mwarabu** (Civil Application No. 10 of 2015) [2016] TZCA 2518, it was submitted that the TRAT's decision was tainted with illegality that need to be addressed by the Court. Elaborating, the applicant argued that TRAT relied on non-existing evidence which was not produced before it and hence not part of the evidence on record. That, the respondent's affidavits in Consolidated Application Nos. 26 & 27 of 2023 did not attach any document to support the alleged sickness of the respondent's counsel. He relied on the holding in the case of **Mohamed Salum Nahdi v. Elizabeth Jeremiah** (Civil Reference No. 14 of 2017) [2019] TZCA 168 to assert that the TRAT's reliance on non-existing evidence was a fundamental error that has not only denied the applicant a right to be heard but also it was an abuse to the due process of justice. He also cited the case of **Finca (T) Limited & Another v. Boniface Mwalukisa** (Civil Application No. 589 of 2018) [2019] TZCA

561 to contend that the alleged illegality was apparent on the face of record as the applicant was denied an opportunity to be heard on non-existing evidence.

It was further submitted that there was a technical delay as the applicant was not issued on time with a certificate of a delay. To fortify the submission, the applicant cited the case of **Asha Juma Mansoor & Others v. John Ashery Mbogomi** (Civil Application No. 192 of 2020) [2021] TZCA 379 where the Court granted an extension of time to lodge an appeal on account that the delay was caused by the failure to issue a certificate of delay on time.

It was further submitted that the applicant made several attempts in trying to secure a certificate of delay excluding days spent used for waiting to be supplied but in vain. That, the delay was not intentional as the applicant had been diligent but due to exceptional circumstances which were beyond its control, it failed to lodge the memorandum and the record of appeal in time. In the end, the applicant beseeched me to grant the application for extension of time.

On the other side, Ms. Ezekiel fully adopted the affidavit in reply and written submissions and strongly opposed the application. At the outset, she readily conceded to the settled position stated in the cases

of **Okech Akomo v. Konsilata Adoyo and Finca (T) Limited & Another v. Boniface Mwalukisa** (supra) that the allegation of an illegality which is apparent on the face of record is a good cause for extension of time. Nonetheless, she argued that, in the application at hand, the alleged illegality required a detailed and exhaustive analysis of the proceedings and evidence presented before the TRAT to establish contrary to the principle governing the question of illegality. She further submitted that the exhibit which the applicant was contesting was actually attached to the respondent's affidavit in support of the application for extension of time. She referred me to the ruling of TRAT which was attached to the applicant's supporting affidavit and marked Annexure TANESCO 19. In that ruling, TRAT observed that the applicant attached a medical report to substantiate the claim that the respondent's counsel fell sick on the date when the judgment was delivered. She also cited the case of **Tauka Theodory Ferdinand v. Eva Zakayo Mwita (As administratrix of the estate of the late Albanus Mwita) & 3 Others** (Civil Application No. 300 of 2016) [2017] TZCA 1342 to support her assertion that the alleged illegality was not apparent on the face of record and not of sufficient importance for the Court to grant extension of time.

On the issue of the certificate of delay, Ms. Ezekiel submitted that the applicant failed to sufficiently demonstrate the presence of a delay caused by the Registrar because the alleged physical follow ups and phone calls with the Registrar was not substantiated. That, the applicant was not diligent as it belatedly took action in trying to rectify the certificate of delay. Elaborating, Ms. Ezekiel contended that, the requested documents were supplied to the applicant on 31st May, 2024 but a follow up was made after a lapse of twenty- five (25) days, that is, on 26th June, 2024 by writing a letter to the registrar seeking for a certificate of delay. She added that even after being supplied with the certificate of delay, the applicant failed to promptly act and took a wrong move. She added that, in terms of the proviso to rule 90 (1) of the Rules, the Registrar is mandated to exclude days used only for preparing the requested documents and not for supplying documents to the intended appellant. She cited the case of **Calico Textile Industry Ltd v. Pyaraliesmail Premji** [1983] T.L.R. 28 in asserting that failure of a party's advocate to check the law is not sufficient ground for allowing an appeal out of time. In that respect, she argued 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. Urassa, briefly rejoined by reiterating his earlier submission that the applicant accounted for each day of delay which was caused by the Registrar and urged me to grant the application.

In view of rival contentions of the parties, the issue stands for determination is whether the applicant managed to exhibit good cause for the Court to grant the extension of time within which to lodge the memorandum and the record of appeal. I wish to state at the outset that, the power of the Court to enlarge time for doing any act authorized or required by the Rules is governed by rule 10 of the Rules that 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 expiration of that time and whether before or after the doing of the act; any reference in these Rules to any such time shall be construed as a reference to that time so extended". [Emphasis added]*

From the above rule, extension of time is within the discretionary power of the Court which cannot be laid down by any hard and fast

rules but would be determined depending on the circumstances of each particular case upon the applicant having shown a good cause. This was clearly stated in the case of **Kalunga & Company Advocates Ltd v. National Bank of Commerce Ltd** [2006] TLR 235 that:

"The Court has discretion to extend time but such extension in the words of Rule 8 [now rule 10] can only be done if "sufficient reason has been shown".

Further, in the case of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (Unreported), the Court made it clear that sufficient cause is relative and dependent upon the party seeking extension of time to provide relevant materials to move the Court to exercise its discretion. Although sufficient cause is relative but there are some guiding factors which the Court has to consider, depending on the circumstances of each particular case such as the applicant must account for all the period of delay; the delay must not be inordinate; the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and the existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged -see: **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; **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another** (Civil Application No. 6 of 2001) [2004] TZCA 45 and **Benedict Shayo v. Consolidated Holdings Corporation as Official Receivers of Tanzania Film Company Limited** (Civil Application No. 366/01 of 2017) [2018] TZCA 252.

We have stated earlier on that, in the present application, the applicant has advanced three reasons but the first and second grounds were consolidated. Therefore, these two grounds would be conjunctly considered.

In the first and second grounds, the applicant claimed that the decision of the TRAT was tainted with illegality thus denied it a right to be heard. The claimed illegality which the applicant would like the Court to ultimately consider after granting the extension of time was TRAT's reliance on a medical chit. The applicant contended that such evidence was not tendered before it, whereas, the respondent argued that it was attached to the respondent's affidavits. As rightly submitted by Ms. Ezekiel, it is not in every situation where there is a claim of illegality, the time will be extended. There must be a clear error on record which does

not require a long-drawn process of reasoning to establish it. It is in that respect, in the case of **Lyamuya Construction Company Limited** (supra), the Court said:

*"Since every party intending to appeal seeks to challenge a decision either on points of law or fact, it cannot in my view, be said that in **VALAMBHIA's** case, the Court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one. **The Court there emphasized that such point of law, must be that "of sufficient importance" and I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process.**" (Emphasis added)*

It follows then that an allegation of illegality must be apparent on the face of the record in order to persuade the Court to exercise its discretionary power to enlarged time to do any act authorised or required by the Rules.

In the instant application, with due respect to the submission of the learned counsel for the applicant, I am not persuaded that the

illegality raised by the applicant was apparent on the face of record. I find that the argument whether TRAT took into account evidence which was or not tendered in evidence requires a long-drawn process of reasoning to establish it. I therefore find that the first and second grounds were lacking merit and hereby dismiss them.

I now turn to the third ground that the certificate of delay was belatedly issued to the applicant, according to the applicant's affidavit, the certificate of delay was dated 17th September, 2024 and excluded days reckoned from the date when the applicant requested to be supplied with the copies of proceedings, ruling and drawn order, that is, on 22nd November, 2023 to the date when the applicant was notified that the requested documents were ready for collection, that is, on 29th May, 2024.

Admittedly, the certificate of delay was of no use to the applicant because, by the time it was issued, the sixty days within which to lodge the memorandum and record of appeal had already lapsed on 28th July, 2024. Nonetheless, upon receipt of the certificate of delay, instead of seeking for extension of time, the applicant was busy trying to seek rectification of the certificate of delay for it to include days up to the date when the applicant was supplied with the certificate of delay. The

move was contrary to the dictates of the proviso to rule 90 (1) of the Rules which allows the Registrar of the High Court to exclude only days from the date when the intended appellant requested for copies of proceedings to the date when he notified the intended appellant that the documents are ready for collection. In the case of **CRDB Bank PLC v. True Colour Limited & Another** (Civil Appeal No. 29 of 2019) [2021] TZCA 184, the Court stated that:

"It is obvious that the certificate of delay is defective... as it reckons the date of supply of the documents to the appellant as the last date in the computation of time to be excluded instead of the date of notification that the documents are ready for collection."

It follows that the Registrar has no power to exclude days on which the intended appellant received or was supplied with the requested documents.

In the present application, we entirely agree with Ms. Ezekiel that the applicant was not diligent in pursuing its appeal. The applicant deposed in paragraphs 20 and 21 of its supporting affidavit that the requested documents were supplied to it on 31st May, 2024 but made a follow up on 26th June, 2024. This means that it took twenty-five days (25) to make a follow up on the certificate of delay. Furthermore, even

after being supplied with the certificate of delay, the applicant did not act diligently as it first sought to move the Registrar to rectify the certificate of delay while the law does not allow the Registrar to include days used in supplying the certificate of delay to the intended appellant. I also noted that the present application was filed after a lapse of two weeks from the date when the applicant was supplied with the certificate of delay.

It is the law that the applicant must act expeditiously and diligently after becoming aware of the fact that he is out of time, and that, the application has been brought in good faith - see the case of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (Civil Application No. 111 of 2009) [2009] TZCA 195. Given the prevailing circumstances in the present application, I am of the considered view that the applicant was negligent as it failed to take appropriate measures in time to avert further delay. All in all, I find that the applicant failed to account for each day of delay. I therefore dismiss this ground.

In the upshot, I find that the applicant has failed to advance any reason, let alone good cause to warrant the Court exercise its discretion to grant the extension of time. Consequently, for the reasons stated, the

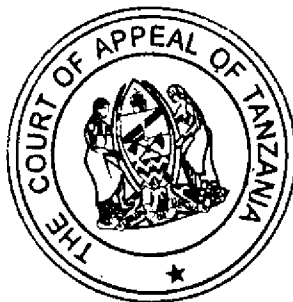
application is hereby dismissed. Considering the circumstance of the instant application, I make no order as to costs.

It is so ordered.

DATED at DODOMA this 11th day of September, 2025

B. M. A. SEHEL
JUSTICE OF APPEAL

The Ruling delivered this 11th day of September, 2025 in the presence of Mr. Steve Urasa, learned counsel and Principal Legal Officer for the Applicant and Ms. Juliana Ezekiel, learned Principal State Attorney assisted by Mr. Andrew Kombo, 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