

IN THE COURT OF APPEAL OF TANZANIA**AT DODOMA****CIVIL APPLICATION NO. 04/15 OF 2025****ZANZIBAR TELECOM LIMITED APPLICANT****VERSUS****COMMISSIONER GENERAL FOR****TANZANIA REVENUE AUTHORITY (TRA) RESPONDENT**

**(Application for Extension of Time to file Notice of Appeal out of time
against the Judgment and Decree of the Zanzibar
Tax Appeals Tribunal at Vuga)**

(Issa, Chairman)**dated 26th day of February, 2021****in****Tax Appeal No. 01 of 2019**

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RULING27th August & 3rd September, 2025**FIKIRINI, J. A.:**

The applicant, Zanzibar Telecom Limited, seeks an extension of time within which to file a notice of appeal against the judgment and decree of the Zanzibar Tax Appeals Tribunal (the Tribunal) delivered on 26th February 2021 in Tax Appeal No. 1 of 2019. The application is brought by way of a notice of motion under Rules 10 and 45 A (1)(a) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The application is

supported by the affidavit of Francis Isdory Temba, the applicant's Head of Tax. The respondent, the Commissioner General of the Tanzania Revenue Authority (TRA), filed an affidavit in reply on 28th April, 2025, affirmed by Fatma Abdallah Hassan, the respondent's Principal Legal Counsel, contesting the application.

The grounds advanced by the applicant entail a series of procedural anomalies, including rectification of the judgment and decree efforts and that the delays are attributable to the Tribunal's processes rather than the applicant's negligence.

The factual matrix, drawn from the applicant's affidavit, can be summarized as follows: On 26th February 2021, the Tribunal delivered judgment in Tax Appeal No. 1 of 2019, dismissing the applicant's appeal against withholding tax assessments on payments made to West Indian Ocean Cable Company (WIOCC) for bandwidth capacity, which the Tribunal characterized as royalties under sections 3 and 82 (1) (a) of the Income Tax Act, Cap. 332, (the Act) then applicable. The Tribunal, however, directed the respondent to recompute the liability using the correct exchange rates as per section 28(2) of the Act.

Aggrieved, the applicant timely filed a notice of intention to appeal on 3rd March 2021, as reflected in annexure **Zantel 2** and timely lodged the appeal, which was registered as Civil Appeal No. 231 of 2021 before this Court. This is exhibited by annexure **Zantel 3**. During the hearing of the appeal on 31st May, 2023, the Court identified a fatal anomaly in the Tribunal's record: the proceedings indicated that the hearing was conducted by Honourable. Rabia H. Mohammed (former Chairperson), but Honourable. Abdulhakim A. Issa signed the judgment without explanation. The matter was adjourned to 9th June 2023 for perusal of the original file. Upon confirmation of the defect, the applicant withdrew the appeal with the Court's leave.

Promptly, on 12th June 2023, the applicant requested rectification of the documents from the Tribunal, but was informed that the original file was still with the Court. After several follow-ups on 21st June 2023, the file was confirmed as returned. The applicant formally requested rectification as evidenced in annexure **Zantel 5**. On 16th August, 2023. A reminder was made. Couple of days later, the rectified copies were ready. To be precise on 8th September, 2023, and were collected on 11th September, 2023. The applicant then filed Miscellaneous Application No. 02 of 2023 before the Tribunal seeking for extension of time, which was

dismissed on 16th August, 2024. Certified copies of the ruling, drawn order, and certificate of delay were requested on the same day and collected on 13th February, 2025. It is against this background, detailing the sequence of events, that the applicant contends the delay is "technical" since it arose from anomalies beyond its control.

The application was scheduled for hearing on 27th August, 2025. Before the Court was Mr. Mianga, learned counsel for the applicant, and Ms. Juliana Ezekiel, learned Principal State Attorney, assisted by Mr. Chizaso Minde, learned State Attorney, who appeared for the respondent.

Mr. Mianga, leading the hearing, submitted that under Rule 10 of the Rules, this Court is vested with the power to exercise its discretion and extend time to perform a specific act beyond the time prescribed by the rules, provided a good cause has been shown.

In the present application, the initial notice of appeal and the appeal were filed timely. However, the appeal was later withdrawn due to a technical reasons. What happened is that in the Tribunal's record, there was unexplained mix up of names of the Tribunal Chairman alleged to have composed the judgement. Since it was not the applicant's fault,

the learned counsel argued the delay is "technical," hence excusable citing **Bahram Logistics Ltd & Another v. National Bank of Commerce Ltd & Another**, (Civil Reference No. 10 of 2017) [2021] TZCA 60 (4 March 2021; TANZLII), in which the Court ruled such delays warranted extension. Mr. Mianga further argued that the applicant acted diligently post withdrawal, accounting for all periods through follow-ups and prompt filings.

Additionally, he imputed illegality as constituting good cause as propounded in the **National Housing Corporation and 3 Others v. Jing Lang Li**, (Civil Application No. 432/17 of 2017) [2021] TZCA 68 (12 March 2021; TANZLII) at page 9. The illegality complained about related to the assessment of tax exceeding the three-year limit under section 96 of the Act, which constituted a good cause. Granting the extension would enable the adjudication of these issues, thereby upholding the right to be heard.

In reply, Ms. Ezekiel opposed the grant of the application, arguing that no good cause was shown. She contended that the applicant lacked diligence in failing to detect the anomaly before filing his notice of appeal and later the appeal itself, leading to the withdrawal.

Besides, she specifically pointed out unaccounted periods which include from 9th to 21st June, 2023, about twelve (12) days and from 8th to 22nd September, 2023, a delay of almost fourteen (14) days. The learned Principal State Attorney relied on the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, (Civil Application No. 2 of 2010) [2011] TZCA 4 (3 October 2011; TANZLII), which required accounting for every day, to conclude that the applicant had failed the test. Associating the decision referred, she contended that the delay was not technical but rather due to negligence.

Canvassing on the issue of illegality, the learned Principal State Attorney argued that it must be of sufficient importance and apparent on the face of the record. In the present application, the illegality alleged was not pleaded in the notice of motion or affidavit, failing the test set out in **Tauka Theodori Ferdinand v. Eva Zakayo Mwita**, (Civil Application No. 300/17 of 2016) [2017] TZCA 1342 (14 June 2017; TANZLII) at pages 14 and 18. Based on her submission, she concluded that the application lacks merit and should be dismissed.

In rejoinder, Mr. Miangi reiterated that the anomaly was the Tribunal's omission, not the applicant's negligence, and all the delayed days were accounted for in the affidavit. Discussing the cited case of **Tauka Theodori Ferdinand** (supra), the learned counsel submitted that the illegality raised met the threshold established in the case and that the illegality raised by the applicant was a point of law.

The pertinent issue in this matter is whether the applicant has demonstrated good cause for the delay.

Rule 10 of the Rules empowers this Court to extend the time prescribed for doing any act so long as good cause has been shown. The term "good cause," having not been defined by the Rules, cannot be applied by any hard and fast rules but is dependent on the facts of each particular case. The Court has adopted this stance in several of its decisions. Some of the decisions are **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited**, (Civil Application No. 96 of 2007) [2007] TZCA 372 (19 December 2007; TANZLII), **Tanga Cement Company Limited v. Jumanne D. Massanga and Another**, (Civil Application No. 6 of 2001) [2004] TZCA 45 (8 April 2004; TANZLII), **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil

Application, No. 27 of 1987, and **Vodacom Foundation v. Commissioner General (TRA)**, (Civil Application No. 107/20 of 2017) [2017] TZCA 1222 (16 June 2017; TANZLII).

I have carefully examined the notice of motion, supporting affidavit, and the parties' submissions. Under Rule 83(1) of the Rules, the prescribed time for filing a notice of intention to appeal is thirty (30) days from the date of the judgment or ruling. In the present matter, the impugned judgment was delivered on 26th February, 2021, rendering the initial notice of appeal timely.

However, following the Applicant's withdrawal of Civil Appeal No. 231 of 2021 on 9th June, 2023, fresh time limits became applicable, thereby necessitating an extension of time. From the record, it is evident that the applicant dissatisfied with the Tribunal's decision, promptly filed the requisite notice of appeal and subsequently lodged Civil Appeal No. 231 of 2021 within the prescribed time. That appeal was later withdrawn on 9th June, 2023. Immediately thereafter, the applicant approached the Tribunal by filing a letter requesting rectification of the judgment and collection of the rectified records. She then applied for an extension of time to file a fresh notice of appeal.

This subsequent application was registered as Tax Application No. 2 of 2023. On 16th August, 2024, the Tribunal, presided over by Chairperson Shamte Khadija, dismissed the application. The ruling was supplied to the applicant on 7th February, 2025, and the present application was filed promptly thereafter, on 21st February, 2025. The applicant is before the Court on a second bite under Rule 45 A (1) (a) of the Rules.

As averred in paragraphs 17–18 of the supporting affidavit, the delay in question is not attributable to negligence or laxity. Instead, it was a “technical delay.” For clarity, technical delay refers to instances where the original matter was instituted within time but failed to proceed due to procedural or administrative factors beyond the applicant’s control.

The period between the withdrawal of Civil Appeal No. 231 of 2021 and the dismissal of Tax Application No. 2 of 2023 falls squarely within the ambit of technical delay. This type of delay is both explicable and excusable, as observed in several authorities, including: **Fortunatus Masha v. William Shija and Another** [1997] TLR 154; **Salvand K. A. Rwegasira v. China Henan International Group Co.**

Ltd., Civil Reference No. 18 of 2006; **Zahara Kitindi & Another v. Juma Swalehe & 9 Others**, Civil Application No. 4/05 of 2017; **Yara Tanzania Limited v. DB Shapriya and Co. Limited**, Civil Application No. 498/16 of 2016; and **Samwel Kobelo Muhulo v. National Housing Corporation**, Civil Application No. 302/17 of 2017. In **Fortunatus Masha**, the Court emphasized that:

"... a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted..."

I fully subscribe to this position. The withdrawal of Civil Appeal No. 231 of 2021 and the subsequent dismissal of Tax Application No. 2 of 2023, should not be used to assess the timeliness of the current application, as the applicant was not sitting idle. Guided by the holdings in the cited authorities, I am convinced that the delay in the present application is excusable and constitutes "good cause" under Rule 10 of

the Rules, the very provision under which the present notice of motion has been brought.

Moreover, the Applicant acted with commendable promptness in filing this application immediately upon receipt of the Tribunal's ruling dismissing her earlier attempt to seek enlargement of time.

Contrary to the respondent's assertion that the applicant failed to account for each day of delay, and that she was negligent from the beginning for not verifying that the documents she was given were in order. It is important to clarify that the responsibility for identifying and rectifying the omission in the document does not rest with the applicant solely. The primary duty to ensure the document's completeness and accuracy lies with the Tribunal that prepared it and maintained custody thereof. Since the omission began with the Tribunal's lack of thoroughness in the documents it furnishes to parties to the case, I fail to see that as a reason to punish the applicant, as to be completely negligent. Having said so, it does not mean I condone sloppiness.

Apart from the alleged contribution of lack of keenness, the applicant's affidavit deposed provides a detailed chronology of events. The initial letter was verbally rejected due to the absence of the file,

which was confirmed returned on 21st June, 2023. The Applicant re-lodged the letter on 23rd June, 2023. Furthermore, the period from 8th to 11th September, 2023, was spent collecting the rectified ruling, decree, and proceedings, with counsel travelling from Dar es Salaam to Zanzibar, followed by subsequent consultations with the client, culminating in the filing on 22nd September, 2023.

In my considered view, the period from 9th June, 2023 to 21st June, 2023 has been adequately accounted for. The applicant exhibited no negligence as suggested, but rather pursued the matter "*diligently and tirelessly.*"

On the second ground, regarding the alleged irregularity, the applicant contends that the assessment exceeded the three-year limitation under section 96 of the Act. During submissions, the learned counsel for the applicant directed the Court's attention to paragraph 19 of the supporting affidavit, asserting that it addressed the irregularity. To put the applicant's counsel submission in context, paragraph 19 is reproduced below:-

"That unless this application is allowed, and the applicant is granted an extension of time, the

complained irregularities/anomaly complained in the judgment sought to be impugned cannot be challenged. The only remedy and constitutional one is to allow the applicant so that the irregularities in the impugned judgment/decreed of this Court are heard and decided by this Honourable Court."

Rule 48 of the Rules requires that an application for extension of time be made by way of a notice of motion supported by an affidavit. The requirement in the notice of motion, is that it must clearly state the legal provisions relied upon and the orders sought. At the same time, the affidavit in support must contain the factual grounds supporting the application. The case of **Barclays Bank (T) Ltd v. Jacob Muro**, (Civil Appeal No. 357 of 2019) [2020] TZCA 1875 (26 November 2020; TANZLII), reinforces the well-established principle that parties are bound by their pleadings. The Court observed:-

"We feel compelled, at this point, to restate the time-honoured principle of law that parties are bound by their own pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at

variance with the pleaded facts must be ignored.”

In the present application, the applicant’s claim of irregularity in the impugned decision ought to have been explicitly pleaded in both the notice of motion and the affidavit. No such particulars were provided. This statement is vague and fails to specify the nature of the alleged irregularities. When an applicant relies on illegality or irregularity, they must clearly articulate the nature of the complaint in their pleadings to enable the respondent to respond meaningfully and the Court to understand the issue. Failure to do so amounts to a failure to plead the issue, rendering it impermissible to raise such matters during submissions. As held in **Chandrakant Joshubai Patel v. R** [2004] TLR 2018:

“After the Court’s perusal of the notice of motion and its supporting affidavit has not been able to see any averment or statement providing a description or detail of the said error... the applicant has only presented his dissatisfaction with the holding of the Court... the application is wanting in merit.”

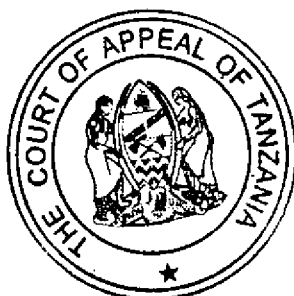
Applying this principle to the present application, I find that the second ground, alleging irregularity, cannot be sustained. The alleged illegality is neither apparent on the face of the record nor explicitly pleaded in the notice of motion.

Having considered both grounds, it is my considered opinion that the first ground, demonstrating good cause for the delay, is merited. Accordingly, proceed to grant the application for extension of time to lodge a notice of appeal out of time. The Applicant is to file the intended notice of appeal within thirty (30) days from the day of this order. Costs in due cause.

DATED at DODOMA this 3rd of September, 2025.

P. S. FIKIRINI
JUSTICE OF APPEAL

Ruling delivered this 3rd day of September, 2025 in the presence of Mr. Alex Mianga learned counsel for the Applicant, Ms. Juliana Ezekiel, learned Principal 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