

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 14/01 OF 2018**

<b>1. JOHN DONGO 2. ALLAN K. SANGA 3. KASSIM LUCIAN 4. MBAYA MOHAMED MRISHO</b>	}	..... <b>APPLICANTS</b>
---	---	-------------------------

**VERSUS**

**LEPASI MBOKOSO ..... RESPONDENT**

**(Application for Extension of Time to file Written Submission in Civil  
Application against the Ruling of the High Court of Tanzania  
at Dar es Salaam)**

**(Mgonya, J.)**

**dated the 11<sup>th</sup> day of August, 2017**

**in**

**Civil Application No. 378/17 of 2017)**

**RULING**

**25<sup>th</sup> March & 11<sup>th</sup> April, 2019**

**LEVIRA, J.A.:**

The applicants herein through the service of learned advocate, Prof. Abdalla Saffari lodged this application under Rule 10 of the Court of Appeal Rules, 2009 (the Rules) seeking for extension of time within which to file written submission in Civil Application No. 378/17 of 2017. The notice of motion is supported by their counsel's affidavit. On his

party, the Respondent neither filed a reply affidavit nor written submission.

The matter was called on for hearing on the 25<sup>th</sup> March, 2019 and both parties were duly represented by learned counsel. The applicants were represented by Prof. Abdallah Saffari, learned counsel whereas, the respondent enjoyed the service of Mr. Benjamini Jonas, learned counsel.

At the onset, Prof. Saffari adopted his affidavit and written submission without adding anything. However, he was of the view that the respondent did not file reply affidavit and written submission because the application in itself is "harmless."

In reply, Mr. Benjamin admitted that the respondent did not file reply affidavit and written submission. He was quick to indicate that the respondent does not oppose the application.

The reason for delay to file written submission in time is stated under paragraph 4 of the affidavit. The learned counsel for the applicants stated therein that, he could not file a written submission within sixty days required by the law because he was overwhelmed by a myriad of domestic and international undertakings which demanded his personal attention. Under paragraph 8, he expressed his belief that

extension of time to file written submission will ensure justice in this application and the intended appeal.

Although the application is uncontested, I still find it necessary to consider at this juncture as to whether the applicants have been able to advance good cause to warrant extension of time. Before answering this issue, I wish to observe, as indicated earlier, that the counsel for the applicants despite of being given an opportunity to explain the reasons for delay to file the intended submission in time, he opted to rely solely on his affidavit and the written submission. It can be gathered from the written submission by the counsel for the applicants that, applicants were supposed to file written submission within sixty days from the date of filing application No. 378/17 as per the requirement of the law under Rule 106(1) of the Rules. The learned counsel cited the case of **Mobrama Gold Corporation Limited v. Minister for Energy and Minerals and the Attorney General and the East African Gold Mines Ltd as Intervenor** [1998] T.L.R 425 which stated that:

*"It is generally inappropriate to deny a party an extension of time **where such denial will stifle his case**, as the respondent delay does not constitute a cause of procedural abuse or contemptuous default and because the applicant will not suffer any*

*prejudice an extension should be granted.” [Emphasis added]*

In his written submission, Prof. Saffari referred to the New International Webster's Pocket Dictionary, Trident Press International, 2002 p. 412 where the word "stifle" used in the above decision is defined to mean, to kill by stopping respiration, to hold back or suppress. The definition was provided with the aim of justifying the application.

I wish to state that, I do not think that the above quoted decision and the defined word (stifle) in particular intended to discharge the applicants from the obligation of furnishing good cause for the Court to extend time. Nevertheless, the issue before me is not on the outcome of denial of extension of time but whether the applicants have been able to advance good cause to justify extension of time. In my considered opinion, whether or not the case is or will be stifled depends on a number of things including actions of the applicant(s). It has to be clear, the Court is there to ensure that justice is done and thus, it cannot and is not expected to stifle cases.

I now turn to Prof. Saffari's submission. In his submission, the learned counsel also explained that, he was overwhelmed by a myriad of domestic and international undertakings which demanded his personal

attention as a reason for delay to file written submission in time. According to him, failure to file the requisite submission was not deliberate. It was his views that, delay of two months in filing the submission is not inordinate and it has neither prejudiced the respondent nor defeated the ends of justice. He thus, prayed for the application to be granted.

As shown earlier, the affidavit and written submission indicate the sole ground for delay is the fact that, the counsel for the applicants was overwhelmed by a myriad of both domestic and international undertakings. It is so unfortunate, the said undertakings were not disclosed and when exactly they did take place as a way of accounting for each day of the delay. The law is well settled, in case of delay, the applicant has to account for each day of delay. But, this is not the case in the matter at hand.

Rule 10 of the Rules under which this application is brought provides that:

*"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 the expiration of that time and whether*

*before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.”[Emphasis added]*

The above quoted Rule empowers the Court upon good cause being shown to extend time. However, I am mindful of the fact that, there is no hard and fast rule in defining what it means by the term “good cause.” The power vested in the Court in extending time must be exercised judiciously; particularly, when determining “good cause” by considering circumstances of each case.

In **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010**, (unreported) it was stated:

*“What constitutes good cause cannot be laid down by any hard and fast rules. The term **“good causes”** is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion.”[Emphasis added]*

The counsel for the applicants in the current matter, just decided to give a blanket statement when he submitted that, he was overwhelmed by a myriad of domestic and international obligations as a

sole reason for failure to file written submission in time. It was his argument that the application was not opposed by the counsel for the respondent. Therefore, the same be granted as there will be no prejudice on the part of the respondent.

I wish to put it clear that, the fact that the respondent did not object to this application, in itself, is not a good cause, had it been so I presuppose the Rules could so provide. Moreover, this fact does not discharge the applicants from the obligation of showing good cause; and, being accountable for each day of delay. Whether or not the respondent will be prejudiced has to be determined by the Court and not the applicants.

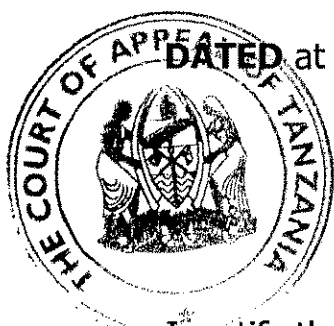
In **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) the Court provided guidelines for grant of extension of time, among them is for the applicant to account for all the period of delay. Therefore, the counsel for the applicants is under obligation to account for the whole period of delay. Being guided by this remark, I do not agree with the counsel for the applicants that the two month's delay is not inordinate. The applicants are required to account for each day of delay from when

sixty days within which they were supposed to file written submission without leave of the Court expired. According to the affidavit of the counsel for the applicants, Application No. 378/17 of 2017 was lodged on 24<sup>th</sup> August, 2017. This means that the written submission was supposed to be filed by 25<sup>th</sup> October, 2017. It is also on record that, the current application was filed on 25<sup>th</sup> January, 2018 almost three months after the prescribed time and not two months stated by the learned counsel for the applicants in paragraph 7 of his affidavit. I find that circumstances prevailing in this matter where the counsel for the applicants does not advance good cause of delay distinguishes it from the above cited case of **Mombrama Gold Corporation Limited**.

By way of passing though, I wish to comment that refusal of the application for extension of time under the circumstances of this matter, is not and cannot fall under the technicalities intended to be addressed by Article 107A(2) of the Constitution of the United Republic of Tanzania, Cap 2. The applicants will exercise their right to be heard before the Court within the prescribed time, save for the right to file written submission. This in my considered opinion will not at any stretch of imagination amount to barrier to the ends of justice. Instead, will ensure speedy delivery of justice.




For the reasons stated above, I find that applicants have failed to advance good cause to warrant extension of time for them to file written submission. As a result, the application is dismissed. Since the respondent neither filed affidavit in reply nor reply written submission, I make no order as to costs.



**DATED** at **DAR ES SALAAM** this 9<sup>th</sup> day of April, 2019.

M.C. Levira,  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**