THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF MBEYA
AT MBEYA
MISC. LAND APPLICATION NO. 33 OF 2019.

(Arising from Application No. 203 of 2011, in District Land and Housing Tribunal of Mbeya, at Mbeya).

1. **AZULU MWALONGO.....1ST APPLICANT**
2. **LEONARD RIWA.....2ND APPLICANT**
3. **MARIAM HASSAN.....3RD APPLICANT**
4. **TORIO MAFIE.....4TH APPLICANT**
5. **SEVERINA MWAIFANI.....5TH APPLICANT**
6. **TUMSIFU MAHENGE.....6TH APPLICANT**
7. **YUNDA MWAKISU.....7TH APPLICANT**
8. **EDINA PETER.....8TH APPLICANT**
9. **BUPE MWAIJULU.....9TH APPLICANT**
10. **ARON PINGA MAHINYA.....10TH APPLICANT**
11. **SAMWEL NYALUKE.....11TH APPLICANT**
12. **ABDUL SHABAN MSIMBE.....12TH APPLICANT**
13. **KAROLI AUGUSTINE MTANI.....13TH APPLICANT**

VERSUS

AMBONISYE MBILIKE MWANDEMBO.....RESPONDENT

RULING

27/02 & 20/05/2020.
UTAMWA, J:

The thirteen applicants in this matter, AZULU MWALONGO, LEONARD RIWA, MARIAM HASSAN, TORIO MAFIE, SEVERINA MWAIFANI, TUMSIFU MAHENGE, YUNDA MWAKISU, EDINA PETER, BUPE MWAIJULU, ARON

PINGA MAHINYA, SAMWEL NYALUKE, ABDUL SHABAN MSIMBE and KAROLI AUGUSTINE MTANI moved this court for the following orders:

i. That, this court be pleased to grant extension of time for the applicants to make an application for extension of time within which to file a reference from a ruling of a Taxing Officer dated 3rd September, 2014 (henceforth the impugned ruling) in Application No. 203 of 2011.

ii. That, subject to outcome thereof, grant an order extending time for the applicants to file the intended Reference.

iii. Costs of this application be provided for,

iv. Any other or further orders the court may deem fit to grant.

The application was made by a chamber summons under sections 14 (1), 19 (2) and Item 21 of Part III of the Schedule to the Law of Limitation Act, Cap. 89 R. E. 2002, Order 8 (1) and (2) of the Advocate Remuneration Order, 2015 (GN. No. 264 of 2015) (Formerly Rule 6 (1) and (2) of the Advocates Remuneration and Taxation of Costs Rules, 1991 (GN. No. 515 of 1991) and section 2 (2) of the Judicature and Application of Laws Act, Cap. 358 R. E. 2002. I will hereinafter call the Advocate Remuneration Order, 2015 the ARO for convenience in the discussions. The application was supported by an affidavit of Mr. Mika Thadayo Mbise, learned counsel for the applicants.

The respondent, Ambonisye Mbilike Mwandembo resisted the application by filing a counter affidavit sworn by his learned counsel, Mr. Ladislaus Rwekaza. His counsel also lodged a notice of preliminary objection (PO) against the application. The parties agreed, and the court

directed the following plan to be observed for saving the time: that, parties were directed to argue both the PO and the application concurrently by way of written submissions. In this ruling thus, the court has to firstly consider and determine the PO. If it will be overruled then it (the court) will proceed to the merits of the application. Otherwise, if the PO will be upheld, the court will make necessary orders according to law. I now consider the PO.

Initially the PO raised by the respondent was based on two legal points. The first was that, the application was incompetent and unmaintainable. The second limb was on wrong citation of the enabling provisions of law in the original chamber summons (i. e. before it was amended). The respondent's counsel however, withdrew the second limb of the PO and retained the first only. I will thus, consider only the first limb of the PO in this ruling.

Before I proceed with the PO, I feel legally obliged to make the records clear and make a finding on two crucial legal aspects. The first is that, the applicants did not cite any enabling provisions of the law in the amended chamber summons. The second is that, in the original chamber summons they cited a revoked law. Thought parties did not address themselves to these two legal aspects, I am duty bound to address them. This follows the understanding that, this is a court of record. Besides, courts are obliged to decide matters before them according to law and constitution irrespective of the attitude taken by the parties to court proceedings.

Regarding the court's first legal aspect, I am of the view that, it is clear from the record that, before the respondent's withdrawal of the second limb of the PO, this court ordered the applicant to amend the chamber summons in view of clearing uncertainties on the names of the 10th and 12th applicants. The applicants' counsel accordingly complied with the order by filing a substituted chamber summons on the 18/11/2019. The substituted chamber summons however, did not indicate any where the provisions of the law under which the application was based.

In my view, the omission by the applicant to cite the enabling law in the substituted chamber summons is, an irregularity in the application yes, but not a fatal one. This view is based on the following grounds: in the first place, the respondent did not raise or resume the objection related to wrong or non-citation of the enabling provisions though he is legally represented. In taking this course, I am also fortified by the decision of the Court of Appeal of Tanzania (CAT) in the case of **Kalyango Construction and Building Contractors LTD v. China Chongquing International Construction Corporation (CICO), CAT Civil Appeal No. 85 of 2009 at Tabora** (unreported ruling). In that case the court made a crucial observation on the status of original pleadings in court records where they are subsequently amended. It remarked *inter alia*, that, such original pleadings (talking of a plaint) is the one which instituted the suit and which brought it into existence. It must remain part of the record of the suit. It is not true that an original pleading is of little consequence. The CAT further observed that, an amendment does not mean that the original pleadings have ceased to exist in the record. They may sometimes be referred to by

the court to show consistency. In underscoring this particular position of the law the CAT followed the observation by the Court of Appeal for East Africa in the case of **Dhanji Ranji v. Malde Timber Co (1970) E. A. 422.**

Due to the parity of reasons, I am of the view that, the guidance made by the CAT in the **Kalyango Case** (supra) applies not only to suits, but also *mutatis mutandis* to applications like the one under consideration. This is because, a chamber summons legally institutes proceedings in an application and can therefore, be equated to pleadings. Owing to these reasons, it cannot be said that the original chamber summons which originated the application at hand is non-existent altogether. This court is thus, entitled to read the substituted chamber summons by making reference to the original chamber summons and conclude that, the applicants had cited the provisions of law in the application at hand.

Another reason for the course I opted for herein above is that, the non-citation under discussion did not, in my view, prejudice the respondent in anyway. No wonder, his counsel did not raise any objection against the omission upon the applicants filing the amended chamber summons as observed earlier. Besides, the purposes for the amendments were only for clarifying the uncertainty regarding the names of two parties as indicated before. The amendment was ordered not for any serious irregularity in the chamber summons. It follows thus that, under the circumstances of this matter, the principle of "Overriding Objective" operates in favour of the applicant regardless of the non-citation. The principle of Overriding Objective has been recently underlined in our law vide see section 6 of the

Written Laws (Miscellaneous Amendments Act) (No. 3) Act, No. 8 of 2018 (Act No. 8 of 2018). These provisions amended the Civil Procedure Code, Cap. 33 R. E. 2002 (now Cap. R. E. 2019). The amendments added new sections 3A and 3B to the statute. They essentially require courts to deal with cases justly, speedily and to have regard to substantive justice as opposed to procedural technicalities which are also known as legalism. The principle was also underscored by the CAT in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported).

As to the second court's legal aspect, it is clear in the original chamber summons that, the applicants cited a heap of laws as enabling provisions. They even cited a revoked law, to wit: rule 6 (1) and (2) of the Advocates Remuneration and Taxation of Costs Rules, 1991 (GN. No. 515 of 1991). The GN. No. 515 of 1991 was in fact revoked by Order 71 of the ARO. In fact, the law guides that, it is not fatal for an applicant to cite a superfluous law in the chamber summons when he also cites the actual enabling law. However, I am settled in mind that, this rule did not extend to the citing of revoked or repealed laws as enabling laws. This trend is impractical and cannot be condoned by courts for, it may occasion unnecessary confusions. A revoked law is a dead law, hence non-existent. Its nothingness does not deserve it any citation as among the enabling laws. In fact, it may result to incompetence of the application in opportune situations.

Certainly, from the record, it is notable that, some attempts to rectify the impugned ruling through a reference to this court had been made by

the applicants before the ARO came into force, and when the cited dead law was still in force. However, this was not a warrant for the applicants' counsel to cite that dead law as among the enabling provisions in the application at hand. It would suffice for the counsel to state that particular fact in the affidavit supporting the application at hand. The learned counsel for the applicants is thus, warned to avoid that strange trend in future practice.

However, for the reasons shown above in discussing the first legal aspect, I am not of the view that the respondent was prejudiced by this irregular citation of the non-existent law. This is because the actual enabling law was also cited along with the revoked rule and superfluous laws. This is in fact, an undisputed fact by the parties as it will be seen below.

In sum therefore, I find that, the non-citation in the amended chamber summons and the citation of the dead law in the original chamber summons discussed above were not, under the circumstances of the case, lethal to the application. I will thus, proceed to consider the PO which is based on the single-limb.

In supporting his PO, the learned counsel for the respondent essentially contended in his submissions in chief that, it was improper for the applicants to firstly seek for an extension of time so that he can file an application for extension of time to lodge the reference. The reasons for his arguments were that, in law, an application for extension of time has no time limitation. The law only requires the applicant to adduce sufficient

reasons for the prayed extension of time. He fortified his contention by the decisions of the CAT in **CRDB Bank Ltd v. Issack B. Mwamasika and two others, Civil Application No. 469/01 of 2017, CAT at Dar es Salaam** (unreported) and **Tanzania Rent A Car Limited v. Peter Kimunu, Civil Application No. 226/01 of 2017, CAT at Dar es Salaam** (unreported). He further argued that, it would suffice for the applicants to seek for the extension of time straightforward and provide sufficient reasons if any, as guided under Order 8 (1) and (2) of the ARO. These were in fact, undisputedly, among the cited enabling provisions of the law in the original chamber summons as I hinted earlier.

The respondent's counsel further indicated in his submissions that, Item 21 of Part III of the Schedule to Cap. 89 cited in the chamber summons sets the sixty days as time limitation regarding applications for which the law does not set the time limitation. However, it does not apply to applications for extension of time, especially in the matter at hand since Order 8 (1) and (2) of the ARO makes a guidance.

Owing to the above arguments, the respondent's counsel urged this court to strike out the application with costs.

In his replying submissions to the PO, the learned counsel for the applicants submitted that, the application is in essence twofold. The first prayer is for extension of time so that the applicants can apply for extension of time to lodge the reference out of time. The second prayer is for the actual extension of time to lodge the reference belatedly. The argument by the respondent's counsel that the applicants could have

directly applied for the extension of time is thus, not weighing since that course was followed as per the second prayer.

The applicants' counsel further argued that, it was necessary for his clients to firstly make the first prayer since sixty days had lapsed before they could file an application for the second prayer. This is the requirement set under Item 21 of Part III in the Schedule to Cap. 89 as amplified in various decision of this court including the following: **Michael Kazimoto and 2 others v. Mbeya RETCO and another, Civil Case No. 15of 1993** (unreported), **Atupakisye Mwakikuti v. Sekela Mwakikuti and another, Misc. Land Application No. 81 of 2017** (unreported), **Gapco Tanzania Ltd v. Ramzan D. Walji Company Ltd Misc. Land Application No. 102 of 2016** (unreported), and **Best Mwansasu v. Joel Kiputa, Misc. Land Application No. 119 of 2016** (unreported).

The counsel for the applicants further supported his above demonstrated position by decisions of the CAT in **Bank of Tanzania v. Said A. Marinda and 30 others, CAT, Civil Reference No. 3 of 2014** (unreported) and **MIC Tanzania Limited v. Minister for Labour and Youth Development and Attorney General, CAT, Civil Appeal No. 103 of 2004** (unreported). He underlined that, the **Bank of Tanzania case** (supra) has not been overruled and is thus, a binding authority. He added that, the respondent's counsel has not also demonstrated that the application is illegal or vexatious or an abuse of court process. The fact that the first prayer in the amended chamber summons is superfluous to the respondents' counsel does not make the entire application illegal. He supported this particular contention by a decision of the CAT in the case of

Tanzania Revenue Authority v. Tango Transport Limited, Civil Application No. 4 and 9 of 2008, CAT (unreported).

In his rejoinder submissions, the respondent's counsel basically reiterated the contents of his submissions in chief. He also distinguished the precedents cited by the applicants' counsel for being irrelevant and for the fact that the **CRDB Bank case** (supra) was the most recent precedent of the CAT.

The major issue before me regarding the PO is *whether or not the entire application at hand is incompetent for the reasons adduced by the respondents' counsel.* In answering this issue, I firstly agree with the applicants' counsel that, according to the anatomy of both the original and the amended chamber summons, the application embodies two major prayers. I will thus, test the competence of each prayer separately.

Regarding the first prayer, the sub-issue is whether or not this prayer (for extension of time for the applicant to file an application for extension of time so that they can lodge their reference out of time) was properly made before this court. In my view, the law is in favour of the arguments made by the respondent's counsel. According to the **CRDB Bank case** (supra) and the **Tanzania Rent A Car case,** both cited (supra) by the respondent's counsel, there is no time limitation regarding applications for extension of time. The sixty days rule set under Item 21 of Item III in the Schedule to Cap. 89 applies generally to applications the time limitation of which is not fixed by any law, save for applications seeking extension of time. In fact, the CAT in the **CRDB Bank case** followed its previous

decisions including the **Tanzania Rent A Car case** (supra) in cementing the position that the sixty days rule does not apply to applications for extension of time.

On the other hand, I agree with the respondent's counsel that, the precedents cited by the applicants' counsel are distinguishable. This my view is based on the following grounds: in the first place, the decisions of this court, cited by the applicant's counsel will not help the applicants amid the existence of the precedents of the CAT (cited above) deciding the other way. It is common knowledge that, decision of the CAT as the highest court in our jurisdiction, bind all tribunals and courts subordinate to it, this court inclusive; see the case of **Jumuiya ya Wafanyakazi Tanzania v. Kiwanda cha Uchapishaji cha Taifa [1988] TLR 146** (decided by a Full Bench of the CAT). This rule stems from the common law doctrine of *stare decisis* (precedent) which equally applies in our jurisdiction.

Regarding the decision by the CAT in the **Bank of Tanzania case** (supra) upon which the applicants' counsel heavily relied in his submissions, I am of the same view that, it is not on applicants' side. This is because, by reading it closely, it is irrefutable that the CAT at page 5 of the typed version of that ruling, in fact, held in support of the respondent's contention that the said sixty days rule does not apply to applications for extension of time. The CAT categorically observed thus, and I quote it for a readymade reference:

> "We wish first to associate ourselves with the observation made by both learned counsel that Rule 10 of the Rules empowers the Court to extend time for doing any act authorised under the Rules provided good cause is

shown. **And that generally there is no time limit to make an application for extension of time for doing any act provided good cause is shown.**" (Bold emphasis is provided).

One cannot thus, argue that the **Bank of Tanzania case** (supra) is an authority that the sixty days rule extends to applications for extension of time as the applicants' counsel did. It is I believe, for this same reason that the CAT in the **CRDB Bank case** (supra) also remarked that, the words "any application" in the **Bank of Tanzania case** (cited above) were not meant to cover each and every application including applications for extension of time (see at page 12 of the typed version of the ruling in the **CRDB Bank case**). The CAT in the **CRDB Bank case** further envisaged that, an application for extension of time to apply for extension of time to perform a legal act out of the time set by law is thus, misconceived and is liable to be struck out.

Moreover, a close reading of the ruling in the **Bank of Tanzania case** (supra) shows that, the CAT applied the sixty days rule as time limitation on an application for extension of time to file a notice of appeal to the CAT as a "second bite," upon the prior application being refused by the High Court. A panel of three Justices of Appeal applied that rule to such particular applications when considering a reference from a decision of a single Justice of Appeal who had also refused the application like the High Court. That application had been preferred before the CAT (before the single Justice of Appeal) under Rule 10 of the Court of Appeal Rules, 2009.

In my settled view, there is a notable distinction between what I may call, for purposes of this discussion "*actual applications for extension of*

time" on one hand, and "*second-bite applications for extension of time*" on the other. The former connote applications for extension of time made for the first time before any court by applicants who seek extension of time to perform legal acts out of the periods prescribed by the law. The latter kind of applications relate to parties who try their second chance for the same extensions of time before the CAT upon the High Court refusing their actual applications for extension of time. This kind of applications apply in appeals to the CAT by operation of the law. It follows thus that, the CAT in the **Bank of Tanzania case** extend the sixty days rule to the latter kind of applications only, but not to the former kind. The counsel for the applicants cannot thus, get a better shelter under this precedent since the application at hand falls under the former kind of applications and not under the latter type.

Furthermore, the **MIC Tanzania case** cited by the applicants' counsel supra is not an authority for a legal proposition that the sixty days rule applies also to applications for extension of time. This is because, the CAT in that appeal did not consider and determine any issue akin to the one under consideration. If anything, the CAT in that case considered an appeal that had originated in proceedings of the High Court in which a PO had been raised challenging the combination or mixing up of prayers for orders on extension of time, leave and stay of execution in one chamber summons. There was also a second limb of the PO which is totally immaterial here. Furthermore in that case, the High Court had upheld the first ground of the PO and found the application before it incompetent. Yet, it proceeded to determine it on merits, hence the appeal to the CAT. The

CAT's decision on appeal was thus, mainly on this respect. The **MIC Tanzania case** is thus, irrelevant to the application at hand.

Likewise, the **Tanzania Revenue case** cited by the applicants' counsel is unrelated to the matter at hand. The learned counsel relied upon this precedent to show that, the contention by respondent's counsel that the application at hand is superfluous does not make it illegal. In my view, the issue that faced the CAT in that precedent is totally distinct from the issue facing this court currently. In fact, in that case, a single Justice of Appeal of the CAT considered an application for extension of time for lodging the memorandum and record of appeal to the CAT out of time. Prior to that application, the applicant had applied before another single justice of appeal for extension of time (apparently in a second bite) to file the notice of appeal to the CAT out of time. The respondent challenged the subsequent application on the grounds *inter alia,* that, the applicant had to file that subsequent application at the same time when she applied for extension of time to file the notice of appeal before that other single Justice of Appeal (who presided over the application for extension of time to file the notice out of time). The single Justice of Appeal in the subsequent application thus, dismissed the objection. He based his decision on the ground that, though the applicant would have conveniently combined the two applications, filing them separately did not render the subsequent application vexatious, or frivolous or an abuse of process or illegal.

In my view therefore, the subsequent application before the single Justice of Appeal (in **Tanzania Revenue case**) had a distinct legal status

from the application at hand (the first prayer). The law in the **Tanzania Revenue case** (i. e. in the subsequent application before the CAT) permitted the applicant to file the application before the CAT for extension of time to file the memorandum and record of appeal. The mess by the applicant was only that, she filed that application separately and subsequently after she had filed the prior application. In the case at hand however, according to the CAT decisions cited above, the application under the first prayer is needless since it seeks what is not a legal requirement, hence incompetent. No party to court proceedings is entitled to seek from the court a remedy which is unnecessary for pursuing his rights. The **Tanzania Revenue case** is thus, also immaterial in the matter at hand.

Having observed as above, I find that, the application (regarding the first prayer) was misconceived. I accordingly answer the first sub-issue negatively that, the first prayer was improperly made before this court, hence incompetent.

As to the second prayer, I am of the view that, since it is the actual and ultimate target aimed at by the applicants (i. e. for extension of time to file the reference belatedly), and since the counsel for the respondent also argued that this was the only prayer that the applicants could make before this court, and since this prayer is permitted by the law under Order 8 (1) and (2) of the ARO, I find that, it (the second prayer) is in fact, proper before this court, hence competent.

The pertinent question at this juncture is therefore, whether or not, the combination of the incompetent first prayer and the competent second

prayer was fatal to the entire application at hand. In my view, the circumstances of the case do not attract answering this question affirmatively on these grounds: it is common knowledge that, the proper legal remedy for an incompetent matter before the court is none other than striking it out. In my settled opinion therefore, no injustice will be occasioned if the improper first prayer will be struck out so as to give room for the proper second prayer to be considered on merits. The combination did not thus, vitiate the entire application at hand though it was irregular. Indeed, even the above discussed principle of Overriding Objective supports this course.

Owing to the reasons adduced above, I strike out the incompetent first prayer and retain the competent second prayer. The answer to the major issue on the PO is consequently, partly positive and partially negative. It is positive in the sense that, the first prayer is actually incompetent and negative since the second prayer is competent. The PO is consequently, partly upheld and partly overruled. This finding attracts the examination of the merits regarding second prayer (for the actual extension of time to file the reference out of time).

The major issue regarding the second prayer is *whether the application for extension of time has merits*. The law on extension of time is substantially settled in this land. Some of its major rules are that, an extension of time is granted at the court's discretion that is exercised judiciously. It is granted only upon the applicant adducing sufficient reasons; see the decision by the CAT in the case of **Mumello v. Bank of**

Tanzania [2006] 1 EA 227 and many others. This is also the spirit underscored under Order 8 (1) of the ARO.

The sub-issue at this juncture is thus, *whether or not the applicants in the application at hand have adduced sufficient reason/s for the court to grant their application*. The affidavit supporting the application basically states that, the impugned ruling was delivered by the Taxing Officer on **04/09/2014**. The applicants' learned counsel applied for the copy of the ruling on that same date of its delivery. It was however, supplied to the applicants on **19/112015**. Aggrieved by the impugned ruling, the applicants, on **03/12/2015** timely filed a Land Reference No. 5 of 2015 to a Judge of this court under the former GN. No 515 of 1991. The said Land Reference No. 5 of 2015 was however, struck out on **14/02/2019** by the Judge of this court (Makaramba, J. as he then was) for being time barred following a PO raised by the respondent based on the current law. The applicants are thus, late in filing another reference against the impugned ruling. This delay is beyond sixty days, hence the necessity for the application at hand. The delay is thus, not a real delay, but a mere technical delay. If the application will not be granted, the applicants will suffer an irreparable loss and injustice.

In his written submission in chief, the applicants' counsel adopted the contents of the affidavit. He also underscored that, since the previous reference had been filed according to the former law, but was struck out, the delay at issue is merely technical. The applicants were also not idle at the material period, but were fighting for their rights. The learned counsel referred this court to the following precedents for supporting that the

doctrine of technical delay constitutes a sufficient reason for granting the prayed extension of time: **Fortunatus Masha v. William Shija [1997] TLR. 154**, **Luhumba Investment Limited v. National Bank of Commerce Limited, Misc. Civil Application No. 17 of 2018, High Court of Tanzania (HCT), at Tabora** (unreported), **Mohamed Enterprises (T) Limited v. Mussa Shabani Chekechea, Misc. Civil Application No. 81 of 2017, HCT, at Tabora** (unreported) and **Best Mwansasu v. Joel Kiputa, Misc. Land Application No. 119 of 2016, (HCT), at Mbeya** (unreported).

It was also the contention by the applicants' counsel that, the affidavit supporting the application has demonstrated all the factors to be considered by courts in granting extension of time. He listed them as being the length of delay, the reasons for the delay, whether there is an arguable issue such as that of illegality and the decree of prejudice to the respondent in case the application is granted. He supported these factors by citing the decisions in the **Tanzania Revenue case** (supra) and **Mbogo v. Shah [1968] E. A. 93.**

In his counter affidavit, the learned counsel for the respondent essentially deponed facts which had the effect of acknowledging the background of this matter as shown into the affidavit. He did not however, concede to the facts which were striving to justify the delay. He also refuted the fact that the applicants will suffer irreparable loss if this application will be rejected.

The respondents' counsel also contended in his replying submissions as follows: that, the applicants' counsel cannot hide face under the doctrine of technical delay since his previous application was struck out for his own ignorance of the enactment of the ARO. Ignorance of law cannot be a proper excuse for floating procedural rules as underscored by the CAT in the case of **Ngao Godwin Losere v. Julius Mwarabu, Civil Application No. 10 of 2015, CAT at Arusha** (unreported). He added that, the failure to follow the law is fatal and cannot be cured. He cemented this stance by citing decision of the CAT in **Attorney General v. Reverend Christopher Mtikila, Civil Appeal No. 20 of 2007, CAT at Dar es Salaam** (unreported). He also cited the case of **Kapunga Rice Project v. Frank Watson Tweve, Misc. Civil Application No. 19 of 2016, HCT, at Mbeya** (unreported) to emphasise that, users of the law, advocates inclusive, should conform with the changes of the law.

It was also the contention by the respondent's counsel that, the applicants failed to account for each day of delay from **14/02/2019** when their previous application was struck out by this court to **23/04/2019** when they filed the application under consideration (through the original chamber summons). Besides, the copy of the impugned ruling for which the applicants were allegedly waiting for was not a legal requirement to delay them. The applicants have not thus, given valid explanation. They thus, lacked diligence. No sufficient reasons were given. The counsel for the respondent further argued that, under the circumstances of the case the doctrine of technical delay will not assist the applicants for the

negligence of their counsel in observing legal requirements. He thus, urged this court to strike out the application.

Having considered the record, the arguments by both sides and the law, I am settled in mind that, the applicants mainly relied upon the doctrine of technical delay and the fact that they were diligent in pursuing their rights. In fact, it is not disputed by the parties that where an applicant proves that his delay is actually a technical one as opposed to a real delay, then the court has to rank that kind of a delay as a sufficient reason and has to grant the prayed extension of time. I agree with the parties that this position of the law is genuine. The principle of technical delay was, indeed, underscored by the CAT in the **Fortunatus Masha case** cited above by the applicants' counsel. Apart from other precedents cited by him in support of that principle, the following precedents by the CAT also underlined it: **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006, CAT at Dar ss Salaam** (Unreported), **Yara Tanzania Limited v. DB Sharpriya and Co. Limited, Civil Application No. 498 of 2016, CAT at Dar es Salaam** (unreported), **Zahara Kitindi and another v. Juma Swalehe and 9 others, Civil Application No. 4 of 2005** (unreported) and **Bharya Engineering and Contracting Co. Ltd v. Hamoud Ahmad @ Nassor, Civil Application No. 342/01 of 2017, CAT, at Tabora** (unreported).

The parties do not also dispute that, diligence of an applicant for extension of time in following up the matter is among sufficient reasons. I also agree with them since this is the true position of the law; see the decision by the CAT 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 germane questions to be answered here is whether or not the applicants in the matter at hand, are entitled to shelter themselves under the doctrine of the technical delay. In my considered opinion, the circumstances of the case do not favour an affirmative answer to that question. This view is based on the following reasons: The principle of technical delay according to the precedents cited earlier, essentially guides that, where a party files a matter in court, but the court strikes it out for incompetence, then there will be a sufficient ground for extending the time to file a competent matter for the orders or remedies that had been sought in the struck out matter, provided that, the party/applicant promptly moves the court upon the striking out order being made.

In the case at hand, the applicants maintained that, their previous application was struck out by this court (Makaramba, J.) on **14/02/2019**. The record also supports this fact. The record further conspicuously indicates that, the applicants filed the application at hand through the original chamber summons (filed before the amendments discussed above) on **23/04/2019.** However, as rightly argued by the respondent's counsel, the applicants did not recount in the affidavit as to what had happened between these two dates. The law provides that, reasons for the

application regarding extension of time must be embodied into the affidavit supporting the application; see the case of **The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman Bunju Village Government and 11 Others, Civil Appeal No. 147 of 2006, CAT at Dar es Salaam** (unreported). In fact, by simple arithmetic, the period of two months and nine days elapsed between the striking out of the previous reference and the filing of the application at hand.

There is also no any recount of the days of delay for the period mentioned above even in the submissions by the applicants' counsel. In fact, as correctly contended by the respondents' counsel, the law commands that, an applicant in matters of this nature, must account for each day of delay: see the case of **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Application No. 138 of 2016, CAT at Dar es Salaam** (unreported) which followed **Bushfire Hassan v. Latina Lucia Msanya, Civil Application No. 3 of 2001** (unreported). The applicants cannot therefore, be said to have been diligent in pursuing their rights as they claimed.

Moreover, as indicated above, one of the conditions to be met before the doctrine of technical delay applies in favour of the applicant, is that, the applicant must promptly file the subsequent application upon the previous one being struck out. Now, since the applicants in the matter at hand did not account for the period mentioned above, it cannot be said that they were prompt in filing the application at hand so that the doctrine of technical delay can apply in their favour. I therefore, find that the

principle of technical delay cannot rescue the applicants. They cannot also argue that they were diligent in pursing their rights.

Owing to the reasons adduced above, I hereby answer the sub-issue regarding the merits of this application negatively to the effect that, the applicants in the application at hand have failed to adduce sufficient reason/s for the court to grant their application. The major issue is thus, also negatively determined that, this application for extension of time lacks merits. In his written submissions, the respondent's counsel urged this court to strike out the application for want of merits. However, in law the only legal remedy for an application of this nature is not to strike it out, but to dismiss it in its entirety; see section 3 (1) Cap. 89 and the decision by the CAT in the case of **Hezron Nyachiya v. Tanzania Union of Industrial Commercial Workers and another, CAT, Civil Appeal No. 79 of 2001** (unreported). I thus, dismiss the application at hand with costs. It is so ordered.

JHK. UTAMWA.

JUDGE

20/05/2020.

20/05/2020.

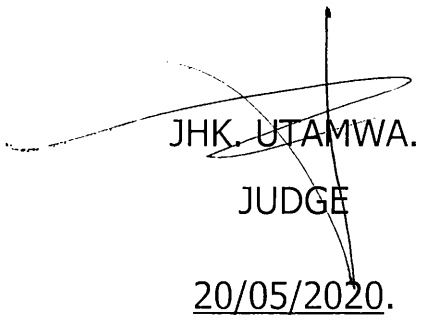
CORAM: Hon. JHK. Utamwa, J.

Applicants: present the 7th, 10th and 12th.

Respondent: present in person and Ms. Cilvia Mwalwisi, advocate.

BC: Mr. Patric Nundwe, RMA.

Court: Ruling delivered in the presence of the 7th, 10th and 12th applicants, the respondent and Ms. Cilvia Mwalwisi, learned counsel for the respondent who also holds briefs for Mr. Mbise, learned counsel for all the respondents, in court, this 20th May, 2020.



JHK. UTAMWA.

JUDGE

20/05/2020.