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IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

CIVIL APPLICATION NO. 414/20 OF 2017

AKIBA COMMERCIAL BANK LIMITED ..... APPLICANT

VERSUS

COMMISSIONER GENERAL (TRA) ..... RESPONDENT

(Application for extension of time to Lodge an application for stay of execution  
arising from the judgment and decree of the Tax Revenue Appeals Tribunal  
at Dar es Salaam

(Shangwa, J.)

dated the 26<sup>th</sup> day of September, 2010

in

Tax Appeal No. 5 of 2008

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**RULING**

5<sup>th</sup> & 28<sup>th</sup> June, 2018

**MWAMBEGELE, J.A.:**

By a Notice of Motion taken under rule 10 of the Tanzania Court of Appeal Rules, 2009 – GN No. 368 of 2009 (hereinafter referred to as the Rules), the applicant seeks an extension of time to lodge an application for stay of execution of the judgment of the Tax Revenue Appeals Tribunal (hereinafter referred to as the Tribunal) dated 26.09.2010 in Tax Appeal No. 5 of 2008. The Notice of Motion is supported by an affidavit deposed by Hadija Kinyaka and resisted by an affidavit in reply deposed by Primi Telesphory Manyanga.

When the application was called on for hearing on 05.06.2018, the applicant was represented by Ms. Hadija Kinyaka, learned counsel and Mr. Marcel Busegano represented the respondent.

Arguing for the application, Ms. Kinyaka adopted the Notice of Motion, the Affidavit in support of the Motion and the written submissions thereof. She submitted that the decision of the Tribunal was delivered on 26.09. 2008. The application for execution ought to have been lodged 60 days from that date. However, the applicant did not lodge that application within time on an understanding of rule 23 (3) of the TRAT Rules – GN No. 56 of 2001 as she had lodged a Notice of Appeal to the Court before expiry of 30 days. That sub rule requires an application for execution to be lodged within 30 days of the date of decision of the Tribunal. Thus the applicant proceeded with appeal to the Court and the Respondent did not apply for execution of the decision to the Tribunal.

The applicant's appeal was withdrawn by the Court on 15.06. 2016 on a defective decree. The main appeal thus collapsed on a defective decree. So even if the appellant would have filed an application for execution, it would have failed, she argued.

Consequent upon that, the applicant went back to the TRAB and TRAT to request for a proper decree in both which was to be signed by all the members.

The same was supplied on 02.03.2017, but the decree of the TRAB is yet to be supplied to date. She added that there were several cases (mentioned in para 14 of the affidavit) which had the same anomaly. They thus spent considerable time to prepare drafts and review the law and later file applications for extension of time. She submitted that they filed the first application but for some reason, they withdraw it and the Court marked it withdrawn on 18.08.2017 and a copy thereof served upon them on 08.09.2017. That they lodged the present application on 18.09.2017.

In view of the above, Ms. Kinyaka prayed that they be extended time within which to file an application for stay of execution and that costs of the application abide by the result of the application for stay of execution.

On his part, Mr. Busegano submitted that they filed an affidavit in reply and written submissions opposing the application. He submitted that the respondent no longer objected to the application provided that the applicant provides security for the due performance of the decree. He added that each party should bear its own costs.

In view of Mr. Busegano's response, Ms. Kinyaka prayed that should be granted with no order as to costs.



I have accorded due consideration to the reasons for delay brought to the fore by Ms. Kinyaka for the respondent and duly conceded by Mr. Busegano. I must confess at this stage that I could not hold my surprise at the respondent despite filing an affidavit in reply and written submissions opposing the application, Mr. Busegano had the temerity to support the application. As if that was not enough, while Ms. Kinyaka was of the view that costs of the application should abide by the outcome of the intended application for stay of execution, Mr. Busegano for the respondent, surprisingly, had the audacity to pray that each party should bear its own costs.

Be that as it may, the application was not opposed. Despite the concession by the respondent, I, for one, have accorded due regard to the reasons for delay brought to the fore by the applicant. Having so done, I join hands with the applicant as well as the respondent that the reasons comprise good cause for the delay. As can be gleaned in the affidavit supporting the application, the applicant had to seek for a proper decree to file a proper appeal after the first one was found as defective and made the appeal incompetent. The first application was filed but later withdrawn because the applicant realized that it may not sail through because of some ailment. The application was therefore withdrawn on

18.08.2017 and a copy thereof was supplied to the applicant on 08.09.2017. The present application was filed on 18.09.2018, quite promptly in my view.

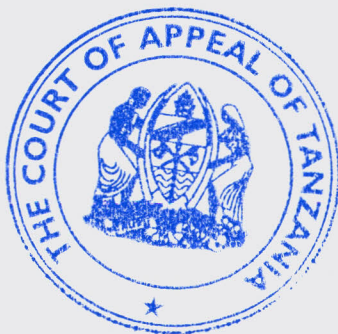
The above stated, I am of the well-considered view that the applicant was prevented by good cause not to timely apply for stay of execution. This unopposed application is meritorious. The applicant is given thirty (30) days within which to file an application for stay of execution prayed for. As the respondent's counsel was of the view that each party shall bear its own costs, I accordingly make no order as to costs.

Order accordingly.

**DATED at DAR ES SALAAM** this 21<sup>st</sup> day of June, 2018.

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

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



A handwritten signature in blue ink, appearing to read "A.H. Msumi".

A.H. Msumi  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**