

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**CIVIL APPLICATION NO. 292/16 OF 2016**

**CHANG QING INTERNATIONAL  
INVESTMENT LIMITED ..... APPLICANT**

**VERSUS**

**TOL GAS LIMITED ..... RESPONDENT**

**(Application for extension of time to apply for Revision from the Ruling and Order of the High Court of Tanzania (Commercial Division) at Dar es Salaam)**

**(Mansoor, J.)**

**dated the 4<sup>th</sup> day of March, 2016  
in  
Commercial Review No. 1 of 2015**

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**R U L I N G**

*10<sup>th</sup> & 25<sup>th</sup> May, 2017*

**LILA, J.A.:**

The applicant is aggrieved by the decision of High Court of Tanzania (Commercial Division) (Mansoor, J.) dated 4<sup>th</sup> March, 2016 in Commercial Review No. 1 of 2015 which was a review decision on the decision of the same High Court (Commercial Division) at Dar es Salaam in Commercial Case No. 78 of 2013 dated 31<sup>st</sup> July, 2015. He wishes to apply for revision but is late hence this application for extension of time within which to apply for revision. The application is by a notice of motion made out under Rule

10 of the Court of Appeal Rules, 2009 (the Rules). The notice of motion was lodged on 26/9/2016.

Read closely, the major reason for delay in filing the application raised by the applicant as contained in paragraphs 3, 4 and 5 of the affidavit in support of the application is that the applicant was delayed by the court in filing the application for revision.

Before me, when the application was called on for hearing, were Mr. Audax Vedasto and Mr. Denis Msafiri, learned advocates, who represented the applicant and Mr. Isaya Matambo, learned advocate, who advocated for the respondent.

Amplifying on the cause of delay, Mr. Vedasto submitted that the High Court decision in Commercial Review No. 1 of 2015, the subject of the application for revision to be filed, was delivered on 4/3/2016 which was a Friday and on Monday 7/3/2016 the applicant filed with the Registrar a letter applying to be supplied with the copy of ruling. He said that he could not apply for revision without the copy of the decision in view of the Court's decision in **Benedicto Mabalanganya v. Ronwald Sanga**, Civil Application No. 1 of 2002 (unreported) which requires a copy of the ruling

sought to be revised be attached to the application. He further stated that the applicant was served with the necessary papers on 20/9/2016 and lodged this application on 26/9/2016, just six days after being supplied with the requisite copies.

Mr. Vedasto further submitted that the applicant acted diligently and promptly and the delay was not in his control as the delay was caused by the Court in delaying to supply the applicant with the requisite documents which he said is good reason for delay as was held by the Court in the case of **Akonaay Sidawe v. Lohay Baran**, Civil Application No. 25/02 of 2016, **Tanzania China Friendship Textile Co. Ltd v. Charles Kabweza**, Civil Application No. 62 of 2015, **Acer Petroleum (T) Limited v. BP (Tanzania) Limited**, Civil Application No. 178 of 2016, and **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (all unreported). He, on the reasons, urged the Court to grant the application.

In opposition, Mr. Matambo, contended that the applicant was not diligent in insuring that he obtained from the court necessary documents for filing the application. He said the applicant served the respondent with a letter to the Registrar applying for copy of necessary documents on 8/3/2016. He however, submitted that there is no proof (an affidavit) from



the clerk whom he contacted when he made physical follow-ups to the Court as stated in the affidavit in support of the application. He further said the applicant wrote a reminder letter dated 20/4/2016 and from then till 20/9/2016 when he was supplied with the court documents the applicant did not tell the steps he took. He was emphatic that the applicant did not account for all the days of delay as insisted in this Court's decision 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). He argued further that though grant of extension of time is at the Court's discretion but there must be sufficient cause for delay established by the applicant as was stated in the case of Benedict Mummelo's case (supra). He also cited the case of **Gibb Eastern Africa Ltd v. Syscon Builders Ltd and Two others**, Civil Application No. 5 of 2005 (unreported) as an authority insisting on the need to obtain an affidavit from the Clerk of the Court contacted by the applicant as proof that the applicant actually made physical follow-ups. Otherwise, Mr. Matambo said, the information becomes untrue. In conclusion, Mr. Matambo, insisted that no good cause has been shown by the applicant to warrant the exercise of the Court's

discretion to extend time. He urged the Court to dismiss the application with costs.

In his short rejoinder, Mr. Vedasto reiterated his earlier submissions and insisted that the applicant has accounted for all the period of delay as the explanation covers the period before being supplied with the court documents (from 4/3/2016 (Friday) when the Ruling was delivered and 7/3/2016 when a letter applying for copy of ruling and proceedings was lodged in court), 7/3/2016 when the letter applying for copies was lodged to 20/9/2016 when the documents were supplied and lastly between 20/9/2016 when documents were supplied to 26/9/2016 when the present application was filed in court. He said there is no Rule or law requiring supplying the respondent with a letter requesting for copy of ruling for purpose of revision as is the case with appeals under the proviso to Rule 90 (1) of the Rules. He added that the Registrar certified the documents on 16/9/2016 and the same were collected on 20/9/2016, just four days thereafter being certified. He added that there is no letter by the Registrar informing the applicant that the copies were ready for collection.

Regarding the requirement to obtain an affidavit from the court clerk whom the applicant contacted when making physical follow-ups of the

copy of ruling, Mr. Vedasto argued that in Gibb's case (supra) the applicant indicated what happened in the advocate's office but that cannot be done with the Court.

Assisting Mr. Vedasto, Mr. Msafiri, submitted that in Benedicto Mabalanganya's case (supra) the court excluded all the period used in the preparation of the record. He added that the applicant collected the documents after the Registrar had certified them.

I have given due consideration to the arguments by counsel for both sides. Their arguments invite the court to determine whether or not this application should be granted. The condition for the grant of an application for extension of time is provided under Rule 10 of the Rules. In disposing of this application it is therefore necessary, first, to quote Rule 10 of the Rules. It reads as follows:-

*10. 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 doing of any act authorized by these Rules, 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 is mine).*

On the basis of the above exposition of the law, the basic issue for determination by the Court is whether the applicant has advanced acceptable circumstances leading to the delay for this Court to exercise its discretion and allow extension of time.

Comprehensive considered, the affidavit in support of the application and submissions, both written and oral by counsel for the applicant, it is apparent that the only explanation for the delay advanced by the applicant in filing an application for revision is that the Court was late in supplying the applicant with the requisite documents.

From the submission by counsel for both sides it is not in dispute that the ruling subject of revision, if this application is granted, was delivered on 4/3/2016 which was a Friday. It is also not in dispute that the applicant lodge in court a letter applying for a copy of the ruling and proceedings on 7/3/2016 which was a Monday, just after three days from the date the ruling was delivered which was also the first working day after the delivery of the ruling.

In his submissions Mr. Vedasto submitted that he made both physical follow-ups and wrote two reminder letters demanding for supply of the requisite documents from the Registrar. Mr. Matambo disputes these contentions by Mr. Vedasto on the ground that the reminder letters were not served on the respondent and there is no proof from the court clerk whom the applicant contacted as there is no affidavit to that effect. Mr. Matambo, did not however, dispute that the requisite documents were certified by the Registrar on 16/9/2016 and the applicant collected them on 20/9/2016.

I have perused the record and I am satisfied that the applicant wrote a letter to the Registrar applying for copies of ruling, drawn order, proceedings and exhibits in respect of the ruling delivered on 4/3/2016 and was presented to the court on 7/3/2016. He thus acted promptly as the 5<sup>th</sup> and 6<sup>th</sup> March, 2016 were not working days.

The issue here is what else should a party who has presented his letter to the Court applying for copies of Ruling, Judgment, decree/drawn order and proceedings thereafter do? Mr. Matambo seems to suggest that the party should make physical follow-ups and write reminder letters and should thereafter be able to prove that he actually did so by either



presenting affidavit of the court clerks who were contacted or the respondent be served with copies of reminder letters.

There is good sense in making physical follow-ups and writing reminder letters to the Registrar for that may assist in expediting the process of preparing the requisite documents and also show the applicant's seriousness and urgent need to be supplied with such documents. However, this should not be left to be the practice. In the first place, as rightly submitted by Mr. Vedasto, it is not a requirement of the Rules that copy of a letter to the Registrar applying for a copy of ruling/judgment decree/drawn order and proceeding for purposes of filing an application for revision should be served on the respondent. Neither is it a requirement that a copy of a reminder letter be served on the respondent. So, if the applicant happened to do so, even ones, then that was done out of his own will. It is, again, not a requirement of the Rules that after a party has written a letter to the Registrar applying for supply of certain documents, then that party should either make physical follow-ups and or should remind the court the need to promptly be supplied with such documents. The absence of Rules imposing such responsibility presumes that the Registrar will, upon receipt of the letter, immediately take up the matter,

prepare the documents and supply them. And, where the Registrar is late in supplying such documents, he is obliged to prepare a certificate of delay in which he will certify the time having required and spent for the preparation and delivery (supply) of the documents to the party applying.

Prudence, thereafter, demands for the need for the Registrar to notify the party applying for the documents that they are ready for collection. As the party applied for such documents by a letter, the Registrar should reciprocate by also informing the party by a letter that such documents are ready for collection. Though, this is not provided in details under our Rules, we can seek inspiration from the proviso to Rule 90(1) of the Rules. That proviso states:-

*"Save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant."*

In view of the above, it is good discipline and practice in courts for the proper, smooth and efficient administration of justice that parties, after applying by way of a letter for copies of Judgment/Ruling, decree/drawn or proceedings, that they leave the matter with the Court (Registrars) who should promptly prepare the requested documents and thereafter inform the parties when to collect them. The Registrar and other responsible officers of the court should then ensure that preparation and supply of such documents is done promptly. Parties should not be let to unnecessarily visit our courts making follow-up of such documents for this may cause unnecessary influx of people at the corridors of our courts who may disrupt court businesses.

All said, I am of a considered view that after the applicant had applied for copies of ruling, drawn order and proceedings on 7/3/2016 it was upon the Registrar to promptly prepare and certify the documents and inform the applicant that such documents were ready for collection. As indicated above, the requisite documents were certified on 16/9/2016 and the applicant collected them on 20/9/2016 even without being informed by the Registrar by way of a letter. This reveals that the applicant was diligent enough in following up the preparation of the documents. More



so, the present application was filed on 26/9/2016 which is just six days after collecting the documents. No doubts, the applicant acted promptly.

In the instant application, it is crystal clear the registrar was late in preparing and supplying the applicant with the requisite documents. As the letter applying for the documents was filed on 7/3/2015 and the documents were ready for collection on 16/9/2016 after being certified by the Registrar then the applicant cannot be condemned for being late in filing the application for revision. It is the court which gravely contributed to the delay from 7/3/2015 to 16/9/2016 which time was spent by the Registrar in preparing and certifying the documents. Between 16/9/2016 and 20/9/2016, the delay was also caused by the Court for not notifying the applicant, by way of a letter, readiness for collection of the documents.

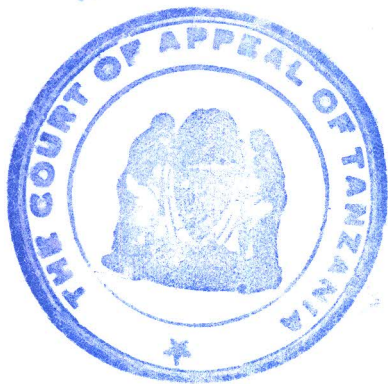
In its decision in **Tanzania China Friendship Textile Co. Ltd v. Charles Kabweza and Others** (supra) the Court categorically stated that a delay caused by the Court in supplying requisite documents is a good cause of delay. The circumstances in this application are in all fours with those which obtained in the above case. I subscribe myself to the Court finding.

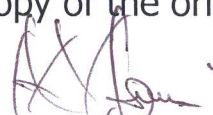
For the foregoing reasons, the reason for delay advanced by the applicant amounts to good cause for extension of time. The application is hereby accordingly granted. The application for revision has to be lodged within thirty days from the date of delivery of this ruling. Costs shall be in the cause.

**DATED** at **DAR ES SALAAM** this 25<sup>th</sup> day of May, 2017.

S. A. LILA  
**JUSTICE OF APPEAL**

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



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