

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

**CIVIL APPLICATION NO. 157 OF 2016**

**TWIGA BANCORP LTD.....APPLICANT**

**VERSUS**

**GRAYSON KIONDO.....RESPONDENT**

**(Application for extension of time within which the applicant be  
granted leave to include a document from the decision of the  
High Court of Tanzania at Dar es Salaam)**

**(Nyangarika, J.)**

**dated the 11<sup>th</sup> day of September, 2013  
in  
Commercial Case No. 19 of 2011**

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**RULING**

**13<sup>th</sup> & 20<sup>th</sup> September, 2016**

**MUSSA, J.A.:**

The applicant, a banking institution, is dissatisfied with the decision of the High Court (Commercial Division) in Commercial Case No. 19 of 2011. The decision desired to be impugned was pronounced on the 11<sup>th</sup> September, 2013 (Nyangarika, J.). Accordingly, she duly filed Civil Appeal No. 4 of 2016 to this Court on the 8<sup>th</sup> January, 2016. Subsequently, the applicant discovered that, the record of appeal did

not include a Ruling of the High Court which was delivered on the 22<sup>nd</sup> May, 2012.

Against the foregoing prelude, the applicant presently seeks enlargement of time within which to include the omitted Ruling in the record of appeal. The application is by Notice of Motion which is predicated under Rules 10 and 96(1) (k) and (6) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit which was duly sworn by Mr. Protace Kato Zake who happens to be the learned counsel for the applicant.

At the hearing before me, the applicant had the services of the referred Mr. Zake, whereas the respondent, who was duly served through Didace & Co. Advocates, defaulted appearance. In the circumstances, pursuant to Rule 63(2) of the Rules, it was resolved that the application should proceed in the absence of the respondent.

In his brief submission, Mr. Zake fully adopted, without more, the Notice of Motion, the accompanying affidavit as well as the written submissions in support of the application. It is noteworthy that the

respondent did not counter the Notice of Motion with any affidavit in reply and, to that extent, the applicant's averments stand unassailed.

In his affidavit, Mr. Zake informs that the absence of the required Ruling crossed his mind as and when he was preparing written submissions in support of the appeal in compliance with Rule 106(1) and (2) of the Rules. The written submissions were eventually filed on the 7<sup>th</sup> March, 2016 and, quite obviously, by that time the applicant could not have included the Ruling without leave of the Court as required under Rule 96(6) of the Rules; hence the present application which was lodged on the 23<sup>rd</sup> May, 2016.

Coming to the merits of the application, it is well settled that it is entirely on the discretion of the Court whether to grant or refuse an application of this nature. In the case of **Mbogo Vs Shah** [1968] EA93, the defunct Court of Appeal for Eastern Africa made the following observation: -

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reasons for the delay, whether*

*there is an arguable case on appeal and the degree of prejudice to the defendant if time is extended. In an application for extension of time, the discretion which falls to be exercised is unfettered and should be exercised flexibly with regard to the facts of the particular case.”*

In the present application, the reasons for the delay advanced by the applicant are, after all, not countered by the respondents. Time is, accordingly, extended and the applicant is granted leave to include the omitted Ruling in the record of appeal within fourteen (14) days from the date of the delivery of this Ruling. It is so ordered.

**DATED at DAR ES SALAAM** this 16<sup>th</sup> day of September, 2016

K.M. MUSSA  
**JUSTICE OF APPEAL**

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

P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**