



THE UNITED REPUBLIC OF
TANZANIA



**NJOMBE OUTGROWERS SERVICES COMPANY LTD V.
NJOMBE FILLING STATION COMPANY LTD
COURT OF APPLICATION OF TANZANIA
AT DODOMA
(MWARIJA. J.A.)
CIVIL APPEAL No. 1252 OF 2024**

(Application for extension of the time within which to lodge an appeal out of time against the Ruling and Drawn Order of the High Court of Tanzania, Commercial Division at Dar es Salaam by Agatho, J. dated the 14th day of December, 2022 in Commercial Case No. 74 of 2022)

Civil procedure — extension of time — Time spent pursuing leave to appeal is excludable from limitation period — Duty to account for all days of delay — Reasonableness and diligence in filing

The Applicant applied under Rule 10 for extension of time to appeal a High Court ruling that had allowed the respondent to withdraw its suit with leave to refile. The Applicant had earlier pursued leave to appeal in the High Court and filed, then withdrew, a similar application in this Court after a statutory amendment removed the leave requirement. The Respondent contended the applicant failed to account for a 332 day delay after learning of the amendment and that the intended memorandum of appeal disclosed no substantial point of law or illegality. The Court applied the Lyamuya principles and held the time spent pursuing leave was excludable and constituted sufficient cause. It accepted that the seven-day interval between obtaining the withdrawal order and filing the present application was reasonable and showed diligence. Having found the Applicant had accounted for the delay, the Court declined to decide alleged illegalities in the impugned decision and granted the extension. The Applicant was ordered to file the appeal within sixty days; each party to bear its own costs.



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Held

1. The Court held that the period during which the applicant was pursuing applications for leave to appeal in the High Court and in this Court is excludable from the computation of the limitation period and that such pursuit constituted a sufficient cause for delay. The Court relied on authority recognising technical delay while an appellant pursues requisite leave.
2. The Court found that the applicant adequately accounted for the remaining period of delay between obtaining the withdrawal order (8/11/2024) and filing the present application (15/11/2024). A seven-day interval to prepare and file the application was reasonable and demonstrated diligence.
3. Because the applicant had accounted for the period of delay the Court did not need to determine whether the impugned decision was tainted with illegalities; the existence or otherwise of such illegalities was unnecessary to the outcome.
4. Applying the governing principles for extension of time (including *Lyamuya*), the Court held that sufficient cause had been shown and that an extension should be granted.

The Court allowed the application and granted the applicant extension of time to institute the intended appeal.

Statutory provisions referred

Rule 10, and 90 (1) of the Tanzania Court of Appeal Rules, 2009

Cases Laws

- a. *Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited*, Civil Appeal No. 111 of 2009
- b. *Mrs. Kamiz Abdullah MD. Kermal v. The Registrar of Buildings and Miss Hawa Bayona* [1988] TLR 199.
- c. *Hamis Mohamed (the administrator of the estate of the late Risasi Ngwale) v. Mtumwa Moshi (the administrator of the estate of the late Moshi Abdallah Civil Application No. 407/17 of 2019.*

Advocate Daniel Welwel represented the Appellant

Advocate Kelvin Kuboja Gamba represented the Respondent