

TANZANIA / JUDGMENT

ruling sinohydro

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18 October 2024

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA MISCELLANEOUS CIVIL APPLICATION NO. 000026099 OF 2024 SINOHYDRO
CORPORATION LIMITED COMPLAINANT / APPELLANT / APPLICANT /
PLAINTIFF VERSUS OBAL SERVICES COMPANY LIMITED RESPONDENT /
DEFENDANT

RULING

J. NKWABI, J, Date: 03 & 03/12/2024 The applicant has an intention to challenge, by way of appeal, the decree of the trial District Court. In the impugned decree, the respondent was awarded T.shs 246,983,763.75 as VAT refund stipulated in the sub-contract, which was under clause 3 of the sub-contract between the parties, general damages at T.shs 30,000,000/= among other reliefs. The applicant's earlier appeal was struck out by this Court for being incompetent. She has filed this application in an endeavour to get an extension of time within which to lodge the intended appeal. The orders sought in this application are thus:

1. That this honourble Court may be pleased to extend time within which to file an appeal against the decision of Kibondo District Court delivered by Hon. Makonya in Civil Case No. 4 of 2023 dated 18th June, 2024.
2. Costs of the application.
3. Any other relief that this honourable Court may deem fit to grant. The chamber summons is made under section 95, Order XLIII Rule 2 of the Civil Procedure Code, Cap. 33 R.E. 2019, section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019. It is supported by an affidavit of Michael Mwangati, learned counsel of the applicant. Page. 1 The respondent was served with the application, and proof of service duly uploaded to Judiciary Case Management System. The respondent did not file a counter affidavit. In terms of Stephen Ngalambe v. Onesmo Ezekia Chaula & Songea Municipal Council, Civil Appeal No. 27 of 2020 CAT, the application is not factually contested. The hearing of this application was conducted by oral submissions. Ms. Christina Mwiyanja, learned counsel, argued the application for the applicant. The respondent did not appear, though duly served. In the affidavit in support of the application, at paragraph, 9, Mr. Mwangati averred that the delay is technical one as the prior appeal was struck out for lack of affixing the copy of decree of the lower court. Indeed,

the prior appeal was struck out on 17/10/2024 and the present application was lodged in this Court on 18th day of October, 2024. That averment was adopted by Ms. Mwiyanja when making her submission in chief in favour of this application. I have closely considered the merits of this application. Without much ado, I would grant it because truly, the delay is technical one and the current application was promptly lodged in this Court thus supported by Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Application No. 138 of 2016, CAT (unreported) and Benedict Mumello v. Bank of Tanzania, Civil Appeal No. 12 of 2002 where it was underscored that: "In the instant case, it is common ground that the respondent applied for copies of the proceedings and judgment on 6.1.1999 which was just about 14 working days of the date of the decision intended to be appealed against. It is also common ground that the respondent was supplied with the same on 8.12.1999 after a reminder and filed the application on 16.12.1998. In our view, applying for copies of proceedings and judgment within such a short time from the date of judgment, and later making a follow up by way of reminder, and finally lodging the application immediately after being supplied with the same, depicts diligence on the respondent. "[emphasis mine]. To wind-up, I find, as correctly argued by the counsel for the applicant, that the applicant has accounted for each day of the delay. The application is granted. The applicant is availed with 30 days from the date of this ruling within which to lodge her intended appeal to this Court. As the application is unopposed, I make no order as to costs. I so order. Dated at KIGOMA ZONE this 3rd of December 2024. Page. 2 J. . NKWABI, J JUDGE OF THE HIGH COURT Page. 3

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