IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 3402 OF 2026

[Case Reference No. 20260212100003402]

METRO PETROLEUM TANZANIA LIMITED ....1st APPLICANT

BILL KIPSANG ROTICH...2nd APPLICANT

FLORENCE CHAPKOECH...3rd APPLICANT

PREMIUM PETROLEUM COMPANY LIMITED...........4th APPLICANT

VERSUS

UNITED BANK OF AFRICA (T) LIMITED..................RESPONDENT

RULING

Date of the last Order: 02nd April 2026

Date of Ruling: 08th May 2026

MKEHA, J:

This is an application by way of Chamber Summons brought under Section 14(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2023, Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2023 and Section 105 of the

Civil Procedure Code, Cap 33 R.E 2023, whereby the Applicants seek orders of this Court to extend time for filing a Notice of Appeal against the decision of this Court delivered on 18th November 2022 in Misc. Commercial Application No. 96 of 2015, the costs of this Application be in the main Cause, and any other Order(s) that this Honourable Court shall deem fit and equitable to grant.

An affidavit of James Andrew Bwana, learned counsel engaged by all the applicants, supports the application and sets out its grounds. On the contrary, the application was resisted by a counter-affidavit sworn by Damas Mwagange, the Head of Legal and Company Secretary of the Respondent.

The record shows that in 2014, the Respondent instituted Commercial Case No. 98 of 2014 against the Applicants, claiming an outstanding debt of USD 2,279,704.27. The Applicants did not enter an appearance, and a default judgment was entered against them. Thereafter, the Applicants initiated various proceedings aimed at setting aside the said judgment, including Misc. Commercial Application No. 96 of 2015. That application was dismissed, later remitted by the Court of Appeal in Civil Appeal No. 147 of 2019, and subsequently dismissed again by this Court on 18th November 2022.

Aggrieved by the said decision, the Applicants lodged a Notice of Appeal within time and later filed Civil Appeal No. 86 of 2024 in the Court of Appeal. However, the appeal was struck out on 3rd February 2026 on account of inconsistencies between the Notice of Appeal and the Memorandum of Appeal.

Following the striking out of the appeal, the Applicants filed the present application seeking an extension of time to file a fresh Notice of Appeal. The Applicants contend that they were not properly served with summons and pleadings in the primary suit, as the Respondent resorted to substituted and irregular modes of service in contravention of the law, thereby resulting in a default judgment entered against them without being heard and in violation of the principles of natural justice. They further assert that the intended appeal raises arguable and weighty points of law, including issues of illegality, improper service, and failure by the trial court to address material matters.

They also maintain that the previous appeal was struck out due to a technical defect not attributable to their negligence, that they have been diligent in pursuing their remedies, and that they acted promptly after the striking out of the appeal. It is their position that no prejudice will be occasioned to the Respondent if the extension is granted, whereas they stand to suffer injustice if denied the opportunity to challenge the impugned judgment.

The application is opposed by the Respondent through counter affidavit, who contends that the Applicants have failed to account for the delay, that the delay is inordinate, that the counsel for the Applicant was negligent, and further, the respondent argues that the application constitutes an abuse of court process intended to frustrate execution proceedings pending in the High Court of Kenya under paragraph 2 (a) – (e) of the counter affidavit.

On the hearing date, Mr. James Bwana and Juvenalis Ngowi, learned advocates, appeared representing the applicants, while Mr. Joseph Kalima Rashid, learned advocate, appeared for the respondent. The court allowed the disposal of the application by filing written submissions.

I have carefully considered the application, the supporting affidavit thereto, and the counter affidavit sworn by the respondent in his capacity as Head of Legal and Company Secretary and reply. I have likewise taken into account the rival submissions filed by the parties. In my considered view, the sole issue for determination in this matter is whether the Applicants have demonstrated sufficient or good cause to warrant the grant of an extension of time within which to file a Notice of Appeal against Misc. Commercial Application No. 96 of 2015 delivered by this court on 18th November 2022.

The application is governed by Section 14(1) of the **Appellate Jurisdiction Act,** [CAP. 141 R.E. 2023] and Section 14(1) of the **Law of Limitation Act,** [CAP. 89 R.E. 2023], which grants this Court discretionary power to extend time where sufficient cause has been shown. Section 14 (1) of the **Appellate Jurisdiction Act** (supra) provides;

> *"14.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."*

And section 14 (1) of **The Law of Limitation Act** (supra), clearly provides that;

"14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

The law is settled that the discretion to extend time by the court must be exercised judiciously. In **Benedict Mumello vs Bank of Tanzania** (Civil Appeal No. 12 of 2002), the Court of Appeal stated that extension of time may only be granted where sufficient cause has been established. In **Stanbic Bank Tanzania Limited vs Chang Qing International Investment Company Limited and Others** (Miscellaneous Commercial Application No. 31311 of 2025) [2026] TZHCComD 116 (4 May 2026) this court emphasized that, in an application for extension of time, the duty imposed to the applicant is that of demonstrating sufficient cause for the delay so as to warranty the court exercise its discretional power of granting the prayer. And that, there is no statutory definition on what entails sufficient cause as stated in different cases citing; **Regional Manager, Tanroads Kagera vs Ruaha Concrete Company Limited** (Civil Application No. 96

of 2007) [2007] TZCA 372 (19 December 2007) TanzLI, **Tanga Cement Co. Ltd vs Jumanne D. Masangwa & Another** (Civil Application 6 of 2001) [2004] TZCA 45 (8 April 2004), **Yusufu Same & Another vs Hadija Yusufu** (Civil Appeal No. 1 of 2002) [2006] TZCA 141 (20 October 2006) and **Vodacom Foundation vs Commissioner General (TRA)** (Civil Application No. 107/20 of 2017) [2017] TZCA 1222 (16 June 2017) (All reported in TanzLII)].

However, in **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of YWCA,** (Civil Application No. 2 of 2010), the Court laid down guiding principles to be considered, namely that the applicant must account for the entire period of delay, the delay should not be inordinate, the applicant must show diligence not apathy, negligence or sloppiness in the prosecution of the action he intends to take, and if the court feels there are other sufficient reasons such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.

It is also established that where an appeal is struck out for technical reasons, the delay occasioned thereby may be regarded as a technical delay. In **Fortunatus Masha vs William Shija**, [1997] TLR 154, the Court emphasised the distinction between actual delay and technical delay. The court held that;

> *"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that* ***the original appeal was lodged in time but had been found to be incompetent for one or another reason, and a fresh appeal had to be instituted.*** *In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances, an extension of time ought to be granted. "[Emphasis added].*

This position was reiterated in **SGS Tanzania Superintendence Co Ltd vs Commissioner General Tanzania Revenue Authority** (Civil Appeal No. 378 of 2024) [2025] TZCA 1234 (25 November 2025) at p. 17 and in **Saulo Malima vs Petro Kingoni** (Civil Appeal No. 154 of 2022) [2024] TZCA 436 (11 June 2024), where the Court held that where an applicant acts promptly after an appeal is struck out, extension of time ought to be granted.

The Respondent has argued that there is a delay of about three years (1095 days) from the date of the decision sought to be appealed against. However, the record clearly shows that immediately after the decision of 18th November 2022, the Applicants lodged a Notice of Appeal within the prescribed time and subsequently filed Civil Appeal No. 86 of 2024. The Applicants were therefore actively pursuing their right of appeal before the Court of Appeal until 3rd February 2026, when the appeal was struck out with costs by the Court of Appeal. In light of the principles laid down in **Fortunatus Masha and Saulo Malima** (supra), the period during which the Applicants were prosecuting the appeal cannot be treated as inordinate delay but rather as technical delay.

However, what remained for explanation is the period from 3rd February 2026 to the date of filing the present application (which is 11th February 2026). The Applicants have submitted that during this period they consulted counsel, prepared the application, and undertook necessary procedural steps, including obtaining a reference number from the Court system, as the matter was instituted before the court online filing system (e-CMS). This period, being about eight days, in my considered view, has been satisfactorily explained or rather, accounted for by the applicants and cannot be regarded as inordinate.

On the question of diligence, the chronology of events shows that the Applicants filed a Notice of Appeal within time in this court, lodged an appeal before the court of appeal, and upon its striking out on 3rd February 2026, promptly filed the present application on 11th February 2026. This conduct demonstrates diligence rather than apathy or indolence on their part.

With regard to the allegation of negligence on the part of the applicants, it is not disputed that the appeal was struck out before the Court of Appeal due to inconsistencies in the record between the Notice of Appeal and the Memorandum of Appeal. However, the law distinguishes between negligence that leads to lapse of time and technical defects in proceedings. As held in **Bharya Engineering & Contracting Co. Ltd vs Hamoud Ahmed Nassor** (Civil Application No. 342 of 2017) [2018] TZCA 339 (10 September 2018), the mere fact that an appeal was struck out on technical grounds does not, without more, establish negligence sufficient to deny extension of time. In the present case, the Applicants have already suffered the consequences of the defect through the striking out of the appeal and the award of costs. To deny them extension on the same ground would amount to imposing a double penalty.

The Respondent has further contended that the application is an abuse of court process and is intended to frustrate execution proceedings. This Court finds that the Applicants are invoking a right expressly provided by law. The exercise of a lawful right cannot, without more, amount to abuse of court process. Furthermore, the present application does not seek a stay of execution, and issues relating to execution proceedings, particularly those outside this jurisdiction, are not relevant to the determination of this application.

On the question of illegality, the Court of Appeal in **Principal Secretary, Ministry of Defence vs Valambia**, [1992] TLR 387 held that the existence of a point of law of sufficient importance, such as illegality, constitutes sufficient reason for extension of time. However, as it was held in the case of **Jubilee Insurance Co. Ltd v. Mohamed Sameer Khan,** Civil Application No. 439/01 of 2020, the nature of illegality warranting the extension of time to be granted should be apparent on the face of the record.

In the matter at hand, the Applicants have raised serious complaints regarding the service of summons, compliance with mandatory provisions of the law, and denial of the right to be heard. Without delving into the merits of those complaints, this Court is satisfied that they constitute arguable points of law of sufficient importance. As held in **Principal Secretary v. Valambia,** (supra), such points may on their own justify the grant of extension of time so that they may be ventilated before the appellate court.

In the result, this Court is satisfied that the Applicants have accounted for the delay, that the delay is not inordinate, that they have demonstrated diligence, and that there exist arguable points of law warranting consideration by the Court of Appeal.

Accordingly, the application is hereby granted. Time for filing a Notice of Appeal against the decision of this Court in Misc. Commercial Application No. 96 of 2015 is hereby extended. The Applicants shall file the Notice of Appeal within thirty days from the date of this ruling. No order is made as to costs. It is so ordered.

DATED at DAR ES SALAAM, this 08th day of MAY 2026.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA COMMERCIAL DIVISION

C.P. MKEHA

JUDGE

08/05/2026

COURT: Ruling delivered in the presence of James Bwana and Juvenalis Ngowi learned advocate for the applicants, and Joseph Kalima Rashid, counsel for the respondent.

C.P. MKEHA

JUDGE

08/05/2026