

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[COMMERCIAL DIVISION]

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 4089 OF 2026

(From Commercial Case No. 28 of 2022)

USANGU LOGISTICS TANZANIA LIMITED APPLICANT

VERSUS

SAS LOGISTICS LIMITED RESPONDENT

RULING

Date of Last Order: 07/05/2026

Date of Ruling: 15/06/2026

KADILU, J.

The applicant is seeking the enlargement of time within which to file a notice of appeal against the decision of this Court in Commercial Case No. 28 of 2022. The application is made by chamber summons supported by an affidavit affirmed by Saadkhan Shermohamed Ismail, a Principal officer of the applicant. The respondent opposed the application by way of a counter affidavit affirmed by Adam Ramadhani Ambani, the Principal Officer of the respondent.

The background giving rise to the instant application is that the respondent instituted a civil suit before this Court against the applicant, alleging that the applicant has breached the terms of the three memoranda of understanding between the parties. Upon hearing the

suit, the Court decided it in favour of the respondent. The decision aggrieved the applicant. She filed an appeal to the Court of Appeal, Civil Appeal No. 438 of 2023. She served the respondent on 15/08/2023. On 21/02/2025, when the appeal was scheduled for hearing, it was struck out for being incompetent.

The applicant filed in this court a Misc. Commercial Application No. 28198 of 2025, for an extension of time to file notice of appeal. It was struck out on 12th February 2026 because the supporting affidavit was defective after containing arguments and opinions. Based on that backdrop, the applicant lodged the instant application was lodged in this Court seeking enlargement of time within which to lodge a notice of appeal. The application is rooted in two grounds as follows:

1. *The original appeal was filed in time but was later struck out as incompetent for technical reasons.*
2. *The Applicant has acted promptly after the ruling striking out the first appeal and after this Honourable Court struck out the first application for extension of time.*

This application was disposed of by way of written submissions. The applicant was represented by Mr. Stephen Axwesso, learned Counsel, while the respondent was represented by Mr. Mohamed Muya, also the learned Advocate.

Mr. Axwesso submitted that the applicant was prosecuting Civil Appeal No. 438 of 2023 at the Court of Appeal until it was struck out on 10th October 2025 for the reason that the certified exhibits were missing from the High Court Registry. He argued that such a factor was beyond the applicant's control and constituted a technical delay. He expounded that where the applicant had previously appealed in time, and that appeal failed due to a technical or procedural defect not attributable to bad faith or negligence, the time spent prosecuting that first appeal is excused as technical delay.

The Counsel explained that under Rule 83 (2) of the Tanzania Court of Appeal Rules, a notice of appeal is required to be lodged within 30 days of the date of the decision. The judgment sought to be appealed was delivered on 30th June 2023. Notice of Appeal was lodged on 10th July 2023, well within the statutory period of thirty days. He cited the case of ***Fortunatas Masha v. William Shija and Another***, [1997] TLR 154, in arguing that the applicant had acted immediately after the initial appeal was struck out.

In establishing the applicant's promptness, her Counsel stated that from 10th July 2023 until 10th October 2025, when the appeal was struck out, the applicant was prosecuting Civil Appeal No. 438 of 2023 before the Court of Appeal. He contended that the applicant was not sitting idle

but was actively engaged in litigation before the Court of Appeal. He added that the applicant has been diligent and prompt in filing the present application because after the first application was struck out on 12th February 2026, she filed the present application on 16th February 2026.

The Counsel argued further that in the instant application, the applicant has demonstrated diligence to warrant an extension of time to be granted. According to him, the respondent has not demonstrated any prejudice that would be suffered if the application is granted. Moreover, the respondent will have a full opportunity to respond to the appeal on the merits once it is filed. He implored the court to grant the application for the interest of justice.

On the other hand, Mr. Muya submitted that Civil Appeal No. 438 of 2023 was not struck out due to the court registry's missing certified exhibits; rather, the applicant neglected to attach them to the record of appeal. No proof that the applicant had requested these documents from the trial court before appealing. Furthermore, when this matter came up for the first time and the omission was noticed, the Court granted her leave to file a supplementary record of appeal. She still failed to file the proper exhibits, leaving the Court with no choice but to strike out the appeal.

He refuted the applicant's contention that the striking out of Civil Appeal No. 438 of 2023 constitutes a technical delay; thus, it must be rejected. The Counsel argued that a true technical delay only arises from administrative or procedural lapses strictly beyond a party's control, such as omissions by the court registry or tribunal. He contended that where an appeal is struck out due to failure to prepare the record properly or to attach certified exhibits, it is negligence, inaction, and apathy on the part of the Advocate.

Mr. Muya added that the filing of a defective application does not freeze the limitation clock, nor does it wipe away the mounting days of delay. Thus, he submitted that the applicant has failed to meet the threshold for granting an extension of time. He supported his stance with the case of ***Lyamuya Construction Co. Ltd v. Board of Registered of Young Women's Christian Association of Tanzania***, [2011] TZCA 4. The Counsel concluded that the applicant has not demonstrated the mandatory conditions stipulated in the above case. As such, her application lacks merit, so it should be dismissed with costs.

According to Mr. Muya, granting this application will cause grave and incalculable prejudice to the respondent because the matter stems from Commercial Case No. 28 of 2022, which was soundly decided in

favour of the respondent, awarding her USD 114,135.94. To date, the respondent has been completely barred from enjoying the fruits of that decree due to the applicant's continuous negligence and procedural blunders.

By way of a rejoinder, Mr. Axwesso submitted that the time spent pursuing proceedings that were subsequently struck out on technical grounds constitutes a valid explanation for delay. He relied on the case of ***Fortunatus Masha v. William Shija & Another***, [1997] TLR 154 and ***ECO Bank Tanzania Limited & Another v. Sikudhani Rajabu @ Sikudhani Abdalla Mshana & Others***, [2025] TZCA 120. He contended further that the applicant's account of the chronology of events demonstrates diligence throughout. He opined that the existence of a decree in favour of the respondent cannot extinguish the applicant's constitutional and statutory right of appeal.

I have keenly gone through the application documents and considered the submissions by the learned Counsel for both sides. The court is now in a position to determine the merits of this application for an extension of time based on technical delay. In other words, the court has to determine whether the applicant has exhibited good cause for the court to grant her the extension of time. It is undisputed that the court has the discretion in granting an application for extension of time, but

such discretion has to be exercised judiciously based on the relevant factors. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended. *See Speed Security Limited v. Hussein Abdallah Kaniki & Another*, [2024] TZCA 311, and *Philemon Mang'ehe t/a Bukine Raders v. Gesso Herbon Bajuta*, [2023] TZCA 17672.

The applicant who has no valid excuse for failure to utilise the prescribed time, but tardiness, negligence or ineptitude of his Counsel, should not be granted extra time merely out of sympathy for his cause. It is trite law that when technical delay is advanced as a ground in the application for extension of time, it can be considered as a sufficient reason to extend time. In the instant application, the applicant alleges technical delay as a ground for extension of time as depicted in paragraphs 29 and 30 of the supporting affidavit.

The doctrine of technical delay was discussed in *Venance Nyaringa Kazuri v. Eldard Mwesigwa Sospeter*, [2026] TZCA 335, in which it was stated that:

"... a distinction should be made between cases involving real or actual delays and those like the present one, which only involves what can be called technical delay in the sense that the original appeal was lodged in

time, but the present situation arose only because the original appeal, for one reason or another, is incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence, if any, really refers to the filing of an incompetent appeal, not the delay in filing it. The filing of an incompetent appeal having been duly penalised by striking it out, the same cannot be used yet again to determine the timorousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal.”

This court has been called to extend the time in which the applicant may file a notice of appeal against the decision dated 30/06/2023 in Commercial Case No. 28 of 2022. The applicant was able to lodge the notice of appeal in time, which prompted her to appeal in Civil Appeal No. 438 of 2023, which was struck out on 21/02/2025 for being incompetent. The applicant attempted to file an application for enlargement of time to lodge a notice of appeal through Misc. Commercial Application No. 28198 of 2025, which was struck out on 12th February 2026, by this Court on the ground that the affidavit in support was defective as it contained arguments and opinions.

On 18th February 2026, the applicant came back to this court seeking the same relief of enlargement of time, which was penalised by being struck out for being incompetent. The applicant is relying on the

principle of technical delay for this Court to exercise its discretion to enlarge the time to lodge notice of appeal against the decision in Commercial Case No. 28 of 2022. It has been asserted that the applicant has been delayed because she was pursuing these matters against the impugned decision. According to her, she could not file a notice of appeal in time because she was penalised by striking out her earlier application for being incompetent.

The respondent claims that there is no good cause advanced by the respondent to warrant this court to exercise its discretion. Further, it was alleged that the applicant was negligent and did not count the days of delay. Looking at the above sequence of events, it cannot be said that the applicant was not diligent. The period between 21/02/2025, when Civil Appeal No. 28 of 2023 was struck out and 12/02/2026, when Misc. Application No. 28198 of 2025 for extension of time was struck out, amounts to a technical delay.

That period was spent by the applicant in court corridors pursuing her rights. The delay was therefore excusable. *See, Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd*, [2006] TZCA 345. In *Stephen Ngalambe v. Onesmo Ezekia Chaula & Another*, [2022] TZCA 130, it was held that:

"With due respect, we do not agree with Mr. Kassale that the fact that two incompetent applications were filed by the appellant suggests negligence on the part of the appellant. It is our considered view that, in the circumstances of the instant case, filing incompetent applications by itself cannot be said to have amounted to negligence. At most, that could have been attributed to a wrong appreciation of the relevant law by the appellant's advocate, which we think cannot, under the circumstances of this case, be construed to the appellant's detriment. Further, to our considered view that under the circumstances of this case, the delay of 11 days from 04.07.2019 when the second application was struck out to 15.03.2019, was not inordinate."

Based on the position laid down in the above case, the delay of six days from 12.02.2026, when the application for extension of time to lodge the notice of appeal in this matter was struck out, to 18/02/2026 when the instant application was filed, is not inordinate. The authorities cited by Mr. Muya insist on counting every single day of delay, and cannot conclude that the applicant failed to account for the period of the delay. To rule out whether the aforesaid different matters constituted technical delay, I have to look at what it means by technical delay. The court, in various decisions, has defined it to mean a delay caused by non-compliance with procedural rules, which may lead to the matter to be struck out.

In ***Philemon Mang'ehe t/a Bukine Traders v. Gesso Herbon Bajuta*** (*supra*), the Court of Appeal observed that:

"... technical delay is applicable in a situation when the first appeal or application was timely but failed to proceed due to some other factors."

Thus, this Court subscribes to the position that a distinction has to be drawn between cases involving real or actual delays and those such as the present one, which clearly only involves technical delays in the sense that the original appeal was lodged in time, but was incompetent for one or another reason and a fresh appeal had to be instituted. The applicant herein filed a notice of appeal, and the appeal was lodged timely against the decision in the Commercial case No. 438 of 2023, which he is seeking to challenge.

Having subjected the applicant's evidence as contained in her supporting affidavit to objective scrutiny, the court finds that the alleged technical delay ground is meritorious. The applicant has demonstrated a good cause for the delay in filing the notice of appeal within the prescribed time. Consequently, I allow the application. The applicant is granted thirty (30) days within which to file a notice of appeal. Given the circumstances of this matter, each party shall bear its own costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "Kadilu", is written over the printed name.

**KADILU, M.J.,
JUDGE
15/06/2026**

Ruling delivered virtually on the 15th day of June, 2026, in the presence of Ms. Glory Venance, Advocate for the applicant, and Mohamed Muya, Counsel for the respondent.



A handwritten signature in blue ink, appearing to read "Kadilu", is written over the printed name.

**KADILU, M.J.,
JUDGE
15/06/2026.**