

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[COMMERCIAL DIVISION]
AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 32274 OF 2025

(Arising from Commercial Case No. 106 of 2021)

SHARIFA ALLY YUSUPH (*Administratrix of the estate of the late Ally Yusuph Suleiman*) APPLICANT

VERSUS

BANK OF BARODA TANZANIA LTD1ST RESPONDENT

KIZIMBANI GYPSUM & MINING

PROSPECTOR COMPANY LTD2ND RESPONDENT

MOHAMED SAID MOHAMED3RD RESPONDENT

ABDULAZIZ SAID MOHAMED4TH RESPONDENT

SABAN MOHAMED5TH RESPONDENT

DELTA VILILO MAFIE6TH RESPONDENT

RULING

Date of Last Order: 21/05/2026

Date of Ruling: 19/06/2026

KADILU, J.

This is a ruling on an application for extension of time within which the applicant may lodge a notice of appeal. The application is made by way of chamber summons, supported by the applicant's affidavit. Under section 14 (1) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2023], the applicant seeks to challenge the Court's decision in Commercial Case No. 106 of 2021, dated 28/08/2023. The application is opposed by a counter-affidavit sworn by Mr. Calvin Mutui, Principal Officer of the 1st respondent. The 2nd, 3rd, 4th, 5th and 6th respondents did not participate

in the hearing of the application despite being duly served. Thus, the hearing proceeded *ex parte* against them.

Briefly, the background of the matter, as depicted in the application documents, may be abbreviated as follows: The 1st respondent filed Commercial Court No. 106 of 2021, claiming against the applicant and all other respondents jointly and severally for the payment of TZS. 918,445,307.58/=, being the outstanding loan facility, overdraft facility, term loan facility, interest and costs of the suit.

Originally, the 1st respondent advanced to the 2nd respondent loan facilities by facility letters dated 14/03/2016, 29/12/2017 and an overdraft facility dated 29/03/2019, all worth TZS. 500,000,000/=, which later accrued interest to the tune of TZS. 918,445,307.58/=. The said facilities were secured, *inter alia*, by general debenture charge of the 2nd respondent, chattel to the properties issued by Mohamed Said Nakanda, the Director of the 2nd respondent, 6th respondent's legal mortgage over landed property on Plot No. 1 Block 25A, Mwanayamala, Dar es Salaam owned jointly with her deceased husband Ally Yusuph Suleiman, and personal guarantees by the 3rd, 4th, and 5th respondents.

The 1st respondent contended that the 2nd respondent defaulted in repayment of the loan facilities, necessitating the realisation of the securities, yet a substantial balance remained outstanding despite

several demands. The applicant stated that the deceased Ally Yusuph Suleiman had never consented to mortgage a landed property to secure a loan facility for the 2nd respondent. As was in the present application, a full trial of the matter proceeded in the absence of the 2nd, 3rd, 4th, 5th and 6th respondents, and no reason was assigned to justify the *ex parte* hearing.

Having heard the applicant's evidence, the learned trial Judge decided the suit in favour of the 1st respondent and held that the 2nd, 3rd, 4th, 5th and 6th respondents are jointly and severally liable to pay the outstanding loan of TZS. 918,445,307.58/=. The decision irritated the applicant. She lodged a notice of appeal to the Court of Appeal on 04/09/2023 and filed Civil Appeal No. 12 of 2025. When the appeal was scheduled for a hearing on 05/12/2025, it was struck out on the ground of incompetence. Now the applicant is seeking the extension of time to file a notice and lodge a fresh appeal.

Hearing of this application was conducted by written submissions. The applicant was represented by Mr. Wilson Mafie, learned Counsel, while Ms. Nicola Ladislaus Rugaiganisa, also the learned Counsel, appeared for the 1st respondent.

At the outset, Mr. Mafie submitted that the applicant was aggrieved by the decision entered in favour of the 1st respondent in

Commercial Case No. 106 of 2021, delivered on 28th August 2023. The applicant's 1st notice of appeal was filed within time, but when the appeal was scheduled for hearing, the Court of Appeal struck it out due to a technical ground. The Court of Appeal's order striking out the appeal was issued on 05th December 2025, which was on a Friday, and the applicant made a follow-up, where on 11th December 2025, she filed this application.

The Counsel argued that the failure to file the appeal within the prescribed period was not due to negligence but was caused by an inadvertent oversight. Specifically, the appeal was well filed, and the case was scheduled for hearing; but regrettably, the accompanying letters requesting the records of appeal endorsed to have been saved to the respondents were omitted when the records of appeal were filed. This omission leads to the appeal being struck out under the Court of Appeal Rules.

The applicant alleges that the trial court proceedings were tainted with irregularities in the sense that the 2nd, 3rd, 4th, and 5th respondents were denied their right to be heard, which is a constitutional right. The trial court proceeded to hear and determine the case without notifying them, and there was no order as to whether the court was requested to proceed ex parte against them. In addition, the irregularities once raised

and proved suffice to make this Court allow the present application by granting an extension of time to file notice of appeal for the Court of Appeal to see the propriety of the proceedings by the trial Court.

Ms. Rugaiganisa replied that the applicant has failed to provide any reasonable, candid, or sufficient explanation to be granted an extension of time. According to her, the striking out resulted from a procedural defect. The applicant's omission of critical and mandatory documents from the record of the appeal is not a mere procedural issue. She attempts to explain the omission by making the vague assertion that it arose from an inadvertent oversight. The law is settled that an applicant seeking extension of time must demonstrate good cause, diligence, and absence of negligence as stated in the case of ***Tanga Cement Co. Ltd v. Jumanne D. Masangwa & Another***, [2004] TZCA 45.

She contended that the applicant has failed to advance good reasons to be granted an extension of time. At best, the explanation reveals negligence in complying with mandatory appellate procedure, which is not a matter of discretion but of strict obligation. To her, the applicant's conduct throughout these proceedings demonstrates a consistent pattern of procedural non-compliance. The learned Advocate

supported her contention with the case of ***Mussa Shaibu Msangi v. Sumry High Class Limited and Another***, [2025] TZHC 6995.

In her view, filing a defective document or failure to comply with the court's order, leading to dismissal or striking out the appeal, application, or any proceeding, does not constitute good cause for extension of time, as they all fall within the party's negligence or ignorance of the law. She added that the applicant has also failed to demonstrate that the intended appeal has high chances of success or that there is any merit warranting the exercise of this Court's discretion.

Ms. Rugaiganisa argued that the record indicates that the trial proceedings were conducted regularly and in accordance with the law, and the applicant cannot at this stage seek to reopen substantive matters that are not proper before the appellate Court. She elaborated that Courts are guided by the principles set out in ***Lyamuya Construction Co. Ltd v. The Registered Trustees of Young Women Christian Association of Tanzania***, [2011] TZCA 4, in which it was stated that:

"(a) The applicant must account for all the period of delay, (b) The delay should not be inordinate, (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take."

She opined that the applicant has failed to satisfy these well-settled requirements, hence she has failed to show a good cause to be granted an extension of time. She beseeched the Court to dismiss the application with costs.

I have keenly gone through the application documents and considered the submissions by Advocates for both sides. This court has been called to extend the time in which the applicant may file a notice of appeal against this court's decision in Commercial Case No. 106 of 2021. The applicant is relying on the two grounds to substantiate the reliefs she sought, which are technical delay and illegality as advanced under paragraph 14 of the affidavit in support of the application. The important paragraphs, which contain those grounds, are paragraph 6, which avers that no issues were framed before the commencement of the hearing of the suit.

Further, technical delay is stated under paragraph 10 of the affidavit, in which it is averred that the applicant was prosecuting Civil Appeal No. 12 of 2025, which was struck out on 05/12/2025 for being incompetent. I will commence the determination of the ground of technical delay advanced by the applicant to support her application. It is a trite law that when a claim of 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.

The doctrine of technical delay in our jurisdiction may be traced from the case of ***Fortunatus Masha v. William Shija & Another***, [1997] TLR 154, in which it was held that:

"...I am satisfied that a distinction should be made between cases involving real or actual delays and those like the present one, which only involve what can be called technical delays 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 timeliness 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."

Certainly, many other decisions of the Court of Appeal have approved these remarks as the foundation for the application of the doctrine of technical delay. The applicant was able to lodge the notice of appeal in time on 04/09/2023, and then she appealed through Civil Appeal No. 12 of 2025. However, this appeal was struck out on 05/12/2025 for being incompetent. On 19/12/2025, the applicant

returned to this Court seeking the relief for enlargement of time to file a notice of appeal. She lodged the application within fourteen days after the appeal was struck out.

The applicant delayed due to her pursuit of matters against the impugned decision. According to her, a notice of appeal was filed timely but was penalised by an order striking out the appeal for being incompetent. The 1st respondent's learned counsel claims that there is no good cause advanced by the applicant to warrant this Court exercising its discretion. Furthermore, it was alleged that the learned counsel for the applicant was negligent, and thus, it cannot suffice for the extension of time on the ground of technical delay.

Looking at the period between 05/12/2025, when Civil Appeal No. 12 of 2025 was struck out for being incompetent, and 19/12/2026, when this application for extension of time was filed, is inconsistent with the contention about the applicant's negligence. That period was spent by the applicant in court corridors pursuing her rights. I find the delay excusable, as held in ***Stephen Ngalambe v. Onesmo Ezekia Chaula & Another***, [2022] TZCA 130, in which 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."

Based on the position in the above case, the delay of fourteen days from 05/12/2025, when the appeal was struck out, to 19/12/2025, is not inordinate in this matter. The authorities cited by Ms. Rugaiganisa, which insist that the negligence of the applicant's learned counsel for the preparation of the appeal, which ended up being struck out for being incompetent, cannot suffice to constitute technical delay, cannot conclude that the applicant has failed to prove the ground of extension of time. Whether the applicant's struggle for justice in this matter constituted technical delay, I must define what technical delay is.

The Court of Appeal has, in various decisions, defined technical delay as a delay in the progress of the case caused by non-compliance with procedural rules, which may lead to the matter being struck out. See, for example, ***Philemon Mang'ehe t/a Bukine Raders v. Gesso Herbon Bajuta***, [2023] TZCA 17672, where it was observed that technical delay is applicable in a situation when the first appeal or

application was timely filed but failed to proceed due to some other factors.

Thus, this Court subscribes to the above decision, which distinguishes between cases involving real or actual delays and those, like the present one, that clearly only involve technical delays. In this application, the applicant filed a timely notice of appeal and the appeal itself against the decision in Commercial case No. 106 of 2021, where she sought to challenge the impugned decision. The fruitless remedies pursued by the applicants to challenge the impugned decision may be treated as a technical delay.

In that regard, I find that the applicant has shown a sufficient cause to move this Court to exercise its discretion in granting the application. Thus, the application has merit, and I hereby grant it. The applicant is granted thirty (30) days from the date of obtaining a copy of this ruling, 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, M.J.', is centered on the page.

**KADILU, M.J.,
JUDGE**

19/06/2026

Ruling delivered virtually on the 19th day of June, 2026, in the presence of Ms. Nicola Ladislaus Rugaiganisa, Advocate for the 1st respondent.



A handwritten signature in blue ink, appearing to read "M.J. Kadilu".

**KADILU, M.J.,
JUDGE
19/06/2026.**