

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO.182 OF 2004

DIRECTOR TAJACK INSURANCE..... APPLICANT

VERSUS

1. ALLY SALIM]
2. OLDONYO LENGAI AUCTION MART]
3. MOTO MOTO REAL ESTATES]..... RESPONDENT
AGENT & COURT BROKERS]
[Arising out of Morogoro District Court Hon. E.J. Mkasimongwa RM
IN Employment Civil Cause No.5 of 2002]

RULING

MANENTO, JK:

The applicant has filed a chamber summons supported by his affidavit under section 14(1) of the Law of Limitation Act, 1971, section 30 of the Magistrate's Courts Act, 1984 sections 79, 93 and 95 of the Civil Procedure Code 1966 for this court to enlarge time to enable the applicants revisional proceedings. He wants this court to revise the proceedings and decision of the Morogoro District Court dated 7/2/2003. This chamber summons was filed on 27/9/2004. This application is made one year and about eight months from the date of judgment.

The affidavit of Aggrey Mwaseba, the Director of Tajack Insurance deponed that he had neither admitted the claim in his written submissions or orally before the court. However, he could not attend the court regularly because of illness. He deponed that he was wrongly recorded as admitting liability in favour of the respondent and finally that he became aware of the judgment at the time of execution of the decree which was by attachment of his assets in realization of the decretal sum of shs.2,373,800/=. Besides those paragraphs of his affidavit which explained the reasons of delay, which was lack of knowledge of the judgment on admissions, other paragraphs in the said affidavit were in relations to the intended revision.

On the other hand, the respondent in his so called notice of preliminary objection which he adopted as part of his submissions, he said that the application is hopelessly time barred and secondly that there is no notice of an intention to appeal. He prayed that the application be dismissed.

The applicant invited this court to look at the proceedings and the written statement of defence, to see whether he had admitted liability in any way, whether in writing or orally before the magistrate.

Looking at the applicant's written statement of defence, in his paragraphs 1.2 and 1.3, he admits responsibilities and the reason for the delay in paying the salaries. He said:-

1.2 The plaintiff has mistakenly the delayed payment of salary due to slackness business income for termination of service.

1.3 Delays in payments of salaries are inevitable at this part of the century under globalization

Again, the proceedings recorded on 28/1/2003 by hon. Riwa Rm reads as follows:

Mr. Mwaseba	- Director of TAJACK Insurance.
	- I promise to pay the part payment of our debt to the plaintiff so that he can solve some of his problems and all what he stated in his plaint we admit. He is our employee and it is our duty to pay him his salaries.

By reading both those two paragraphs in the written statement of defence and what the applicant told the court on 28/1/2003, it is inconceivable to hear the applicant depone in his affidavit that he did not admit the claim. After his admission of the claim, the trial magistrate ordered him to prepare the schedule of payment and pay the respondent. She further ordered for a mention on 7/2/2003. On

that day, the applicant abused his duty and the case file was before another magistrate, now Mr. Mkasimongwa, Rm who formalized the admission by recording the order for judgment on admission. That is what the applicant is quarreling about, and say that he never admitted the claim before any magistrate. Infact, he admitted it on 28/1/2003 and therefore, he knew that he had admitted the claim before the court and in his written statement of defence. If the admission was made on 28/1/2003 before the court, then the applicant cannot be heard to day to say that he was surprised by the respondent's acts of executing the decree by the order of court for attachment and sale. He knew from that very day about his liabilities.

The applicant is calling this court to believe what he says and disregard the court's proceedings. He has never at any rate showed any good reason or cause of the delay to file the application or appeal. However, he could not appeal on a matter he has admitted nor can the court revise the admission of the applicant himself, nor the court go back to issues which were not controverted. I can understand the applicant only that he could not, perhaps pay the respondent in time because of illness but not for any other reason.

In the final analysis, I don't see any reasonable reason shown by the applicant to grant the extension of time for revision. The reasons are two fold. That there are no good cause shown for the said extension and secondly that there is nothing to revise. Therefore, the application is dismissed with costs. Execution should proceed as ordered by the trial court.


A.R. Manento

JAJI KIONGOZI.

17/11/2005

17-11-2005

Coram: S.A. Lila, DR

For the Applicant – Aggrey Director.

For the Respondent: - Absent

Cc: Livanga.

Order: Ruling delivered today in the presence of the applicant and 1st Respondent and in the absence of the 2nd and 3rd Respondent.

S.A. Lila
DISTRICT REGISTRAR
17/11/2005