

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM
REVISION NUMBER 58 of 2011

(Originating from District Court of Temeke in Civil Cause Number 2 of 2006:
Nzowa-RM)

GAPCO (T) LIMITED.....APPLICANT

VS

TEDVAN C. NABORA..... RESPONDENT

Last Order: 02-05-2012

Judgment: 01-06-2012

JUDGMENT

JUMA, J.

The applicant GAPOIL (T) LIMITED and respondent TEDVAN NABORA were the defendant and the plaintiff respectively in the District Court of Temeke Civil Cause No. 2 of 2006. In that civil cause, Nzowa-RM the learned trial Magistrate allowed the respondent Tedvan Nabora to prove his case *ex parte*. On 24th March 2010 upon such *ex parte* proof, the trial court granted the respondent his prayers directing the applicant GAPOIL (T) Ltd to

pay the sum of TZS 46,200,000/= and another TZS 50,000,000/= as general damages for malicious prosecution.

In its Chamber Summons that was filed on 31st October 2011, the applicant has disclosed four substantive prayers: (i) Leave to file an application for revision out of time; (ii) Stay of execution pending the determination of the revision; (iii) Revise and set aside the ex parte decision of the trial district court; and (iv) Costs. In moving this court to grant these prayers, the applicant cited section 14 (1) of the **Law of Limitation Act, Cap. 89**; sections 95, 79 (1) (2), Order XXI Rule 24 (1), Order XXXIX Rule 5 of the **Civil Procedure Code, Cap. 33**; and, section 31 of the **Magistrates Courts Act, Cap. 11**.

This application before me is opposed by the respondent who on 16th February 2012 filed his Counter Affidavit together with a Notice of Preliminary Objection. The objection contains three grounds of objection. Hearing of the Preliminary Objection proceeded by written submissions. Both sides complied with their respective submission schedules. In his submissions the respondent abandoned one ground of objection and argued the remaining two grounds, contending that the application for extension of time is improperly before this court because it was filed under wrong provision of law. Secondly, the respondent

contends that the affidavit made in support of the application is incurably defective for lack of attestation.

On the alleged wrong citation of provisions governing extension of time, respondent submitted that section 31 of the **Magistrates Courts Act** which the applicant relied as a basis for his application seeking an extension of time is not applicable because this is not an application for revision. Respondent has further submitted that the applicant has cited non-existent provisions. According to the respondent; Rule 5 does not exist anywhere under Order XXXIX of the **Civil Procedure Code**. Respondent similarly submitted that section 95 of the CPC which the applicant cited, is not applicable for purposes of extension of time.

Replying to the contention that the applicant has cited improper provision to support extension of time the Ms Lillian Rwetabura the learned Advocate submitted that the applicant has not, for purposes of extension of time relied Order XXI Rule 24 (1) and Order XXXIX Rule 5 of CPC as submitted by the respondent. Instead, the applicant has cited section 14 (1) of the **Law of Limitation Act** to support its prayer for extension of time.

From the submissions of the two sides the issue of citation of proper provisions of the law to seek an extension of time should not detain me much longer. The applicant has combined four substantive prayers in its Chamber Application and has also cited a cocktail of provisions to move this court. Combination of several prayers under one application is not bad in law as long as proper provision for each prayer is also cited to move the court. Section 14 (1) of the **Law of Limitation Act** which the applicant has cited is the correct provision for purposes applying for extension of time. The objection by the respondent, contending that this application for extension of time is improperly before this court, is clearly without merit and is hereby dismissed.

Submitting on why he thinks the affidavit which Henry Sato Massaba took out in support of the application is incurably defective for lack of attestation, the respondent contends that there is no evidence that the deponent took his oath before a Commissioner for Oaths. Failure to do so, contravened the provisions of **Notaries Public and Commissioners for Oaths Act, Cap. 12.**

In reply, Ms Lillian Rwetabura is surprised why the respondent has raised this ground of objection because records

show that the affidavit supporting this application was attested by Mr. Kelvin Gadi, a learned Advocate.

Section 8 of the **Notaries Public and Commissioners for Oaths Act Cap 12 R. E. 2002** requires every notary public and commissioner for oaths before whom any oath or affidavit is taken or made to state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made. The jurat of the affidavit taken out by Mr. Henry Sato Massaba shows that the learned Advocate was sworn at Dar es Salaam on 31st October 2011. The jurat bears the rubber stamp and signature of KELVIN GADI as a Commissioner for Oaths before whom the deponent took his oath. Although the jurat does not specify whether the deponent was known or was introduced to the Commissioner for Oaths, I am prepared to hold that since both the deponent and Mr. Kelvin Gadi are learned Advocates and officers of this Court, they are presumed to know one another. Therefore the point of objection contending that the affidavit of Mr. Henry Sato Massaba contravenes the mandatory section 8 of the **Notaries Public and Commissioners for Oaths Act** has no basis and is hereby dismissed.

All said the points of objection are hereby dismissed and costs shall abide with the outcome of the application.

DATED at DAR ES SALAAM this 1st day of June, 2012



**I.H. Juma
JUDGE**

