

IN THE HIGH COURT OF TANZANIA

**At Dar es Salaam
Civil Revision No 51 of 2009**

(From Kisutu RM's Court, Civil Case No. 248/2005)

TANZANIA ELECTRIC SUPPLY COMPANY LTD..... APPLICANT

VS

MICHAEL SAMWEL KYANDE..... RESPONDENT

RULING

Date of last Order: 24-02-2011

Date of Ruling: 28-02-2011

JUMA, J:

Respondent Michael Samwel Kyande was once an employee of the Applicant Tanzania Electric Supply Company Ltd (TANESCO) before he requested for a voluntary retirement. This request to retire was duly granted by the applicant. Respondent was subsequently paid his attendant voluntary retirement package. The applicant was surprised that despite receiving his retirement package, the respondent on 15 September 2005 filed a Civil Case No. 248 of 2005 at the Resident Magistrates Court of Dar es Salaam

at Kisumu. Applicant in this application is contending that although it is the Industrial Court of Tanzania which had jurisdiction over the trade dispute, the Resident Magistrates Court assumed that jurisdiction, conducted *ex parte* hearing and delivered a judgment. The applicant's attempt to set aside the *ex parte* judgment failed because on 18th December 2008 the trial Resident Magistrate's Court dismissed this applicant's request to set aside the *ex parte* order.

On 22 September 2009 the aggrieved applicant came to this Court and filed this chamber application to ask for-

- a) extension of time within which to file this application;
- b) examination and revision of the order of the Resident Magistrate's Court on the ground that it lacked jurisdiction to entertain the matter that the Respondent had brought before the trial court; and
- c) a ruling that the Resident Magistrate's Court wrongly presided over and determined a case basing on facts which originated in trade dispute between the Applicant and the Respondent.

To move this Court, the Applicant employed section 14-(1) of the **Limitation Act Cap 89** and sections 79 and 95 of the **Civil Procedure Code, Cap 33**. In paragraph 3 of the affidavit taken out by Godson Ezekiel Makia, the applicant deposed on what actually caused the applicant's delayed filing of this application for revision,

3. That the delay to file this Application is attributable to the fact that the copy of the ruling of the Resident Magistrate Court could not be obtained earlier despite of the request made by the Applicant thereto and frequent visits to Court corridor thus 20th August 2009 the Applicant has been served with a notice to show cause why execution should not proceed against the Applicant thereto. Annexed hereto and marked "TANESCO-1" is a copy of notice issued by the trial Court and the leave of the Court is hereby craved that the same forms part of this Affidavit.

Respondent opposed this application by filing a counter affidavit on 25th March 2010. In his Counter Affidavit the respondent basically contradicted the applicant by deposing that copies of the Ruling of the trial magistrate was in fact ready for collection by April 2009 and that the applicant has not advanced sufficient reason why he could not collect the Ruling by April 2009. Hearing of this application proceeded by way of written submissions, which were duly filed. The applicant's submission on its prayer for extension of time basically adopted what Godson Ezekiel Makia had sworn in his affidavit to account what prevented the applicant from seeking an appeal or revision of the 18th December 2008 decision of the trial magistrate.

Before I deal with submissions of the learned counsel for the applicant and respondent, it will be useful first to address myself to the way the Applicant has combined in one chamber application his prayer for an enlargement of time together with a prayer to examine and revise the Ruling and Order of the trial Resident Magistrate. In his replying submission which was filed through

Mkoba & Co. Advocates, respondent drew my attention to the fact that the applicant's chamber summons discloses two basic prayers, i.e. a prayer for an extension of time and a prayer seeking revision of the trial court's Ruling and Order. Respondent proposed that the applicant must first pass over the extension hurdle by showing that it has advanced sufficient ground to deserve enlargement of time before this Court can move on to entertain its next prayer seeking the revision of the trial court's Ruling of 18th December 2008. The Applicant in its submission did not address itself to this legal proposition by the respondent that the applicant must show sufficient reasons for extension of time first before dealing with remaining prayers seeking a revision.

Mapigano, J. (as he then was) in the case of **Tanzania Knitwear Ltd V Shamshu Esmail 1989 TLR 48** stated that combination of two applications in one is not bad in law since courts abhor multiplicity of actions. But that for such combined applications to be valid, the enabling provisions of combined applications must be cited to support each application. I am in full agreement with the legal position taken by Mapigano, J. Combination by the applicant of basic two prayers in one chamber application is not bad in law as long as appropriate provisions of law are cited. But in this application before me the applicant must first obtain an order of extension before his prayer for revision can be heard. For purposes of application before me, if there are no sufficient grounds for granting an extension of time to the applicant then this Court shall

not go on to consider the applicant's application for revision of the trial court's Ruling and Order.

Having restated the law that the applicant must first get an extension of time, it is important now to determine this first hurdle on whether from its supporting affidavit and submissions, the applicant has advanced sufficient reasons to explain what prevented him from lodging his revision proceedings within the prescribed time. According to paragraph 3 of the supporting affidavit, the applicant could not get a copy of the Ruling within time despite frequent visits to the Resident Magistrate's Court and it was only on 20th August 2009 after he was served with a notice to show cause why execution should not proceed against him when he woke up to the need to get the copy of the Ruling for purposes of appeal or revision.

Respondent's responding submission on applicant's explanation of the delay was pointed. According to the respondent, the applicant has not furnished sufficient reasons to justify an extension of time to enable the applicant to file a belated appeal or revision. Respondent submitted that paragraph 3 of the applicant's affidavit lacks substance to provide any sufficient reason. Respondent pointed out that the applicant has not shown how the corridor visits he alludes to in the affidavit were actually made and which court officials were found in the corridors mentioned.

The important issue for my determination is whether the contents of paragraph 3 of the supporting affidavit constitute sufficient grounds to explain delay to file revision proceedings within prescribed time. This Court has on more than one occasion restated the law to the effect that the power to extend time under section 14 (1) of the **Law of Limitation Act, 1971** is a matter of judicial discretion hinging on the special facts of a particular case or application. In the exercise of my discretion I will be guided by the need to do justice to both the applicant and respondent. I will also be guided by the question whether the applicant has manifested sufficient reasons to explain what prevented the applicant from lodging its application for revision within time. I propose to dwell on the question whether or not there are sufficient reasons for the delay.

Records show that the Ruling of J.J. Rugemalila-RM dated 24th November 2008 was delivered by V.M. Nongwa-RM on 18 December 2008 and it was certified on 15th April 2009. This application was filed on 22nd September 2009 which was nine months after the date of its delivery and six months after it was certified ready for collection. In his supporting affidavit, the applicant averred that the delay to lodge an application for revision was occasioned by inability to get a copy of the trial court's Ruling despite lodging a request for that copy of the Ruling. Respondent does not agree with this explanation of what occasioned the delay.

Court of Appeal of Tanzania (Nsekela, JA) in **Regional Manager, TANROADS Kagera vs. Ruaha Concrete Co. Ltd, Civil Application No. 96 of 2007** restated the law with respect to what constitutes "sufficient" by quoting Lord Guest in *Ratma Vs Cumarasamy & Another* (1964) 3 All ER 933 at page 935,

.. what constitutes 'sufficient' reason cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time limited by the rules.

In my opinion, the reasons which the applicant has averred in the affidavit are at best perfunctory lacking seriousness of purpose in pursuing an appeal. Respondent is right in questioning why the applicant has not shown when, how and by whom the request for a copy of the 18th December 2008 Ruling of the trial court was made. As a body corporate, the applicant operates through the agency of its principal officers and a Legal Department. The applicant should have surely specified and furnished copies of letters it wrote and when and who amongst its officers, wrote to request for a copy of the Ruling.

For the foregoing reasons, the applicant has failed to place before this Court sufficient reasons which this Court can objectively assess to enable an exercise of this Court's judicial discretion to order an extension of time. It will serve no utility to address the remaining

prayers in the chamber application. The application is as a result dismissed with cost.

Orders accordingly.


I.H. Juma
JUDGE
28-02-2011

Delivered in Court Chambers in the presence of: **Mr. Natunga**
(Advocate) holding Mr. Mkoba's brief (for the Respondent).


I.H. Juma
JUDGE
28-02-2011

