

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**CIVIL CASE NO. 49 OF 2011**

**UMOJA WA WAKULIMA WADOGO**

**BONDE LA KISERE ..... PLAINTIFF**

***VERSUS***

**NOBLE MOTORS LTD. .... DEFENDANT**

*Date of last order: twenty one/06/2011*

*Date of Ruling: 29/06/2011*

**R U L I N G**

**Dr. F. Twaib, J:**

The record of this case came before me for the first time on 20<sup>th</sup> April 2011. I ordered that notice be issued to the Defendant. I fixed the matter for mention on 27<sup>th</sup> June 2011. That time was enough to enable the Plaintiffs to serve the Defendant and for the Defendant to file its Written Statement of Defence ("WSD").

On 27<sup>th</sup> June 2011, Mr. Marando, learned Advocate, appeared before me representing the Defendant. Mr. Marando prayed for extension of time to apply for extension of time to file WSD out of the statutory twenty one days, and extension of time to file WSD. He was quick to admit that the

Defendant was out of time in respect of both, as it was already 52 days since service was effected on his client.

Before dealing with the merits of the application, it is pertinent, given the law as it stands on these matters, to consider whether this Court has jurisdiction to entertain this application in the first place. Does the Court have the legal mandate to extend time within which the defendant may apply for extension to apply for extension of time to file WSD? When I posed this question to Mr. Marando, he said he was not aware of any decision of the higher Courts that supports his position. However, he referred me to section 93 of the CPC for the proposition that the Court may, under any circumstances, enlarge the time fixed. Section 93 states:

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

My reading of this provision tells me that it can only be invoked to grant extension of time where the period had been “fixed or granted by the Court”. In the present situation, the period has not been granted or fixed by the Court. It is a statutorily prescribed. I do not think that it is open for the Court, in the circumstances, to apply section 93 to extend time fixed by law.

I am guided by the decision of the Court of Appeal in *Tanzania Harbours Authority v Mohamed R. Mohamed*, Civil Appeal No. 80 of 1999 (CAT, DSM, unreported), when it had occasion to determine a similar question. The Appellant in that case had relied on section 93 of the CPC (*supra*) to apply for extension of time after expiry of the first and second period of 21 days each. The Court of Appeal (Makame, Ramadhani and Lubuva, JJA)

held that the proviso to Order VIII rule 2 (1) imposes a limitation on the discretion of the Court to extend time within which the Defendant can file WSD: "The application must be made within 21 days of the expiry of the time set for lodging of the WSD." The Court of Appeal further held that Courts are:

"...duty-bound to see that rules of Court are observed strictly and cannot aid any part who deliberately commits such lapses. To do so, in the present case, would defeat the whole reasoning behind amending the Civil Procedure Rules in 1994."

However, I do not think that we can construe the rule in *Tanzania Harbours Authority* as closing any possible exercise of the Court's jurisdiction. My understanding of the decision in *Tanzania Harbours Authority* is that the Court's discretion to extend time cannot be exercised after the second twenty one days have passed is only the general rule. And, like any general rule, exceptions are permissible. I think *Tanzania Harbours Authority* left it open to the Court to exercise discretion in appropriate cases.

Whether that is to be done under section 93 of the CPC is not clear and will have to await the appropriate opportunity. For, as the Court of Appeal reminded us in *Tanzania Harbours Authority*: "each situation must be looked at according to its own merits". The Court of Appeal gave as an example of such instance, namely, where "there is an illegality to be rectified". That is a very strong criterion. Hence, the grounds for a departure (though not confined to illegality) must be very strong indeed. Otherwise, as the Court of Appeal said, the 1994 amendments of the CPC would be rendered meaningless. I am thus enjoined to consider the grounds advanced for the present application.

In the present case, Mr. Marando cited two reasons for his client's delay: The fact that the summons was received by a junior officer of the Defendant who neglected to bring it to the attention of the principal officers until the first twenty one days had expired; and secondly, that the principal officers, on their part, did not consult their lawyer, Mr. Marando, until after expiry of the next twenty one days. Mr. Marando said that the summons does not show when the same was served, and that the date of service probably appears only in the Plaintiff's dispatch book. Mr. Marando based his prayers on section 93 of the **Civil Procedure Code**, Cap 33 (R.E. 2002). He assured the Court that his client's Defence was ready for filing at any time. Further, he proposed that his client was prepared to foot the Plaintiff's costs of the present application, as the Court may order.

Mr. Ali Salum Kapecha, the Plaintiff's Treasurer, objected to the granting of the application. He submitted that the Defendant was served through one Ketan, on 30<sup>th</sup> April 2011. Mr. Kapecha said that he was told by somebody at the Defendant's office that Ketan was the one responsible, which is why they served him. Any delay, he said, is not the Plaintiff's problem, but the Defendant's. He wondered whether the Defendants were serious about defending the suit.

In rejoinder, Mr. Marando said that Mr. Ketan was a junior accountant of the Defendant's. He is neither the Secretary nor a Director of the company. That was the probable reason for his negligence. However, it is to be noted that it is not only Mr. Ketan who was negligent. Taking Mr. Marando's words as true, then the principle officers were also negligent. They failed to instruct him in time so that he could apply within the twenty one statutory days allowed for extension. This kind of lapse is not excusable. As Mr. Kapecha has submitted, the Defendant does not seem

serious about defending this claim. The situation hardly calls for the exercise of the Court's discretion to grant extension. That is as far as the merits of the application go, which I find wanting.

Consequently, the grounds advanced on behalf of the Defendant in support of the prayer for extension do not justify a departure from the general rule. I therefore dismiss the application with costs.

Dated at Dar es Salaam this 30<sup>th</sup> day of June, 2011.

**Dr. Fauz Twaib**

**Judge**

30<sup>th</sup> day of June, 2011.