IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CIVIL REVISION NO 55 of 2010

(Originating from District Court of Kinondoni at Kinondoni-Civil Case Number 33 of 2002: Fimbo-RM)

AMINA ISSAH.....APPLICANT

VS

WHITE SAND HOTEL.....RESPONDENT

Ruling

Date of last Order: 21-11-2011
Date of Ruling: 28-02-2012

JUMA, J.:

On 1st day of November 2010 the applicant Amina Issah filed this chamber application under sections 14 (1) of the **Law of Limitation Act Cap 89 R.E. 2002** and section 44-(1) (b) of the **Magistrates Court Act, 1984 Cap. 11 R.E. 2002** praying for an extension of time to enable her to apply for revision of a decision of Kinondoni District Court in Civil Case Number 33 of 2010 dated 10th June 2010.

The applicant is also moving this Court to revise the proceedings and the decision of the Kinondoni District Court because the applicant believes that there is an error material on merits of that case involving injustice. In support of this application the applicant affirmed an affidavit which provides the factual background information leading up to this chamber application. In her affidavit, the applicant states that she was a Plaintiff suing for salary arrears and terminal benefits in Civil Case Number 33 of 2002. That case was at the Resident Magistrates Court of Kinondoni between herself and the White Sands Hotel (Respondent herein).

While that case was pending at the subordinate court, the applicant requested the district court to refer the dispute to the Commission for Mediation and Arbitration (CMA) for trial. Instead of referring the dispute, the presiding learned Resident Magistrate **(Fimbo-RM)** on 10th June 2010 dismissed the Civil Case Number 33 of 2002. The applicant believes that the dismissal was an irregular and illegal which, in the interests of justice this Court should revise.

The applicant in her affidavit also explained what occasioned the delay in coming to this Court to seek a revision. She applied for a copy of the dismissal order of **Fimbo-RM)** and received a copy on 1st September 2010. Armed with this copy the applicant went to the CMA on 28th September 2010. It was while at CMA where it dawned upon her that with a dismissal order of the District Court, she could not make any progress in prosecuting her claim for salary arrears and terminal benefits against the respondent White Sands Hotel.

The Applicant then sought the services of Advocate Daimu Halfani of Mpoki & Associates Advocates who advised her to come to this Court to seek for the revision of the order of the district court.

The respondent White Sand Hotel through a counter affidavit sworn by Mr. Gabinus N. Galikano learned Counsel has opposed the application. According to the learned Counsel, the prayer the applicant made to the district court seeking to refer the case to CMA was improper in law and therefore the learned Resident Magistrate did not commit any irregularity or illegality when dismissing the Civil Case

Number 33 of 2002. Further, Mr. Galikano stated that the applicant should instead have prayed for a withdrawal of the Civil Case Number 33 of 2002 from the district court in order to re-file it in the proper court having requisite jurisdiction. Further, Mr. Galikano does not agree with the advice the applicant's advocate gave her to resort for revision jurisdiction of this Court. According to Mr. Galikano, the applicant should ask CMA to grant her an extension of time.

Apart from filing a Counter Affidavit on 16th September, 2011, the Respondent has never appeared to respond to this application. As a result, only the applicant filed her written submissions in support for her application for extension of time and application for revision of the decision of the district court.

Having perused the application, affidavits and after looking at the written submissions by the applicant, it is common ground that the applicant has combined in one application two distinct prayers, one for extension of time to file application for revision; and another for revision. On the combination of two

prayers in one application, I will go along with what Mapigano, J. said in **Tanzania Knitwear Ltd v Shamshu Esmail (1989) TLR 48** that combination of two prayers under one application is not bad in law since courts abhor multiplicity. By citing section 14 (1) of the **Law of Limitation Act** and section 44 (1) (b) of the **Magistrates Courts Act,** this Court has been sufficiently moved to hear the two prayers.

My ruling will be guided by two basic issues. The first issue is whether the applicant has *prima facie* shown any reasonable or sufficient cause for me to extend the period of limitation to enable this Court to hear her application for revision of the decision of the Kinondoni District Court in Civil Case Number 33 of 2002. Regarding the first issue regarding reasonable or sufficient cause, I must observe that the applicant obtained the services of learned Counsel after the trial district court had dismissed her civil case and after she had failed to convince the CMA to admit her case. In the submissions which the applicant filed, she asserted how she belatedly realized that the 60 day limitation period to contest the dismissal order had elapsed.

From the affidavit of the applicant I am able to conclude and find that the applicant was busy following up on ways to prosecute her dispute through the courts of law and this constituted sufficient reason within section 14-(1) of the **Law of Limitation Act, 1971** and for the purposes of hearing her application for revision. I hereby find that the applicant has assigned sufficient reason why she could not file her application for revision within the prescribed period of limitation.

Having extended the time to apply for a revision, I propose next to deal with the second issue regarding the revision of the decision of the district court of Kinondoni. The basis of the prayer seeking the revision power of this Court is based on section 44.-(1) (b) of the **Magistrates Courts Act**, which provides:-

> ***44***.*-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court–*
>
> > *may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice,*

revise the proceedings and make such decision or order therein as it sees fit:

In order for this Court to revise the proceedings of the District Court of Kinondoni in Civil Case Number 33 of 2002 the applicant must show that dismissal of that case was an error that occasioned injustice to the applicant. Records show that on 10th June 2010 when the learned trial magistrate gave the dismissal order only the applicant/plaintiff was present. The verbatim record of proceedings shows:

Plaintiff:
I brought a letter in which, I asked the court to refer my case to the CMA.

Court:
The sent letter states the case shouldn't be dismissed, but I see that since the plaintiff is going to the CMA, I find it just to dismiss it.

SGD by: Fimbo-RM
10/6/2010

In my opinion, the words "withdrawal," "dismissal," "rejection," and even "return" are words which convey special legal meanings under the **Civil**

Procedure Code, Cap. 33. Thus, there are circumstances and procedures under ORDER 7 Rule 10 where a plaint can be returned. There are similarly circumstances and procedures under ORDER 7 Rule 11 where suits can be rejected. The Court of Appeal of Tanzania (Msoffe, J.A., Kileo, J.A., and Kalegeya, J.,) in **1. NIC of (T), 2. Consolidated Holding Corporation vs. Shengena Limited, Civil Application No. 20 of 2007** had an occasion to discuss whether the two phrases *"rejection"* and *"dismissal"* can be used interchangeably. The Court of Appeal ruled that they cannot be used interchangeably under ORDER 42 Rule 7 CPC.

More relevant to this application before me, the Court of Appeal decision in **1. NIC of (T), 2. Consolidated Holding Corporation vs. Shengena Limited (supra)** discussed the scope and import of the word *"dismissal"*. According to the Court of Appeal, "dismissal" would imply that the matter has finally been determined and generally after-hearing merits of the arguments. A dismissal order does not entitle a party to go back to the same court to challenge the order.

Applying the guideline of the Court of Appeal in **1. NIC of (T), 2. Consolidated Holding Corporation vs. Shengena Limited (supra)**, I do not with respect think the learned trial magistrate heard the application to transfer the dispute from the district court to CMA on merit after hearing the arguments of the two sides concerned. I hereby find that the learned Resident Magistrate committed an error when the trial court dismissed the request to transfer the case to CMA without conducting a hearing on merit of that request. The error of the trial court occasioned injustice to the Applicant because she cannot move forward to prosecute for her claims of salary arrears and terminal benefits against the respondent.

In the upshot, the order of the District of Kinondoni at Kinondoni **(Civil Case Number 33 of 2002-Fimbo-RM)** dated 10th June 2010 is hereby quashed. The District Court of Kinondoni is directed to continue with the hearing on merit of the **Civil Case Number 33 of 2002** and also hear an application by the applicant to withdraw the said suit **Civil Case Number 33 of 2002** and lodge her claims before any other court or

tribunal of her choice. The applicant is awarded the costs of this application.

DATED at DAR ES SALAAM this 28th day of February, 2012

I.H. Juma,
JUDGE