IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 60 OF 2012

PLASCO LIMITED .... PLAINTIFF

VERSUS

EFAM LIMITED

FATMA M. RWEYEMAMU ⎬ .... DEFENDANTS

8th & 30th June, 2016

RULING

MWAMBEGELE, J.:

On 2nd December, 2015, Mr. Nereus Mutongore, learned counsel for the plaintiff made a prayer to amend the plaint in this suit. The prayer was predicated upon the fact that a certain Fatma M. Rweyemamu who was impleaded as the second defendant was no more. The plaintiff thus thought there was no need to implead her any more. The court granted the prayer and ordered that a fair copy of the amended plaint be presented for filing within seven days thereof. The amended plaint was presented for filing on 10th December, 2015.

Four adjournments were made before the Deputy Registrar of this court after the order on account of my being out of the station for quite some time and when the case was called on before me for necessary orders on 18th May,

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2016 Mr. Mutongore told the court that he had filed an application for default judgment and asked me to grant the same. In view of the fact that I thought I should hear the defendant's advocate on that application and in further view of the fact that I thought there was a legal point to ask the learned counsel for the parties to address me on, I adjourned the matter to 24th May, 2016. I also made an order that Mr. Gerald Nangi, the learned counsel who had previously been appearing for the defendants, to be notified.

On 24th May, 2016, the day on which I scheduled the learned counsel for the parties to address the court on whether the amended plaint was filed in time, nothing took off. Once again, it was only Mr. Mutongore, learned counsel, who was in attendance. Mr. Nangi had absented himself. Undeterred, I adjourned the matter for such address to 8th June, 2016 and, once again, made an order that Mr. Nangi, learned counsel, should be notified.

Come 8th June, 2016, once again, it was only Mr. Mutongore, learned counsel, who attended. Mr. Nangi did not and there was proof of service. In the circumstances, I allowed Mr. Mutongore to address me on the question; that is, whether the amended plaint was filed in time given that I ordered on 2nd December, 2016 that the amended plaint should be filed within seven days.

It was Mr. Mutongore's submission that based on section 19 (1) of the Law of Limitation Act, Cap. 89 of the Revised Edition 2002, computation of time starts on a next day from the date from which an order of the court was made; that is, the order was made on 2nd December, 2015 time started running on 3rd December, 2015 therefore seven days thereof expired on 9th December, 2015 on which he was required to timely file the amended plaint latest.

The learned counsel went on to submit that 9th December of every calendar year is this country is the Independence Day which is a public holiday. I think the learned counsel was referring to the Independence and Republic Day and I shall hereinafter refer to is as such. He submitted that Public Holidays are governed by statute; the Public Holidays Act, Cap. 35 of the Revised Edition, 2002 in which it provides for a schedule which lists down recognized public holidays and 9th December is listed as a public holiday.

In the year 2015, went on the learned counsel, the newly elected president, Dr. John Pombe Magufuli, suspended the Independence and Republic Day Holiday and deferred the same to 9th December, 2016. The learned counsel argued that that deferment of the Independence and Republic Day Holiday did not affect the day itself not to be a public holiday because His Excellency the President specifically ordered that instead of celebrating the Independence and Republic Day, all citizens should engage in environmental cleanliness. In that case all the government offices did not engage in their normal duties but general cleanliness. Based on section 19 (6) of the Law of Limitation which provides that if the final day falls on the Public Holiday, then that final day will be excluded and the next day will be counted.

Based on the above argument, the learned counsel concluded that the amended plaint filed on 10th December, 2015 was filed timeously and quite in compliance with the order of this court made on 2nd December, 2015.

I heard the learned counsel with keen interest. As rightly pointed out by Mr. Mutongore, learned counsel, the order of this court was made on 2nd December, 2015 and given the provisions of section 19 (1) of the Law of Limitation Act, the last day on which he could have timely filed the amended plaint was 9th December, 2015. And, again, as rightly pointed out by the

learned counsel, 9th December of every year is listed in the schedule to the Public Holidays Act, Cap. 35 of the Revised Edition, 2002 as the Independence and Republic Day; a public holiday.

In the 2015, and this fact is not disputed by the learned counsel, vide Government Notice No. 537 of 2015, published on 23rd November, 2015, His Excellency Dr. John Pombe Magufuli, the newly elected President of the United Republic of Tanzania, deferred the Independence and Republic Day celebrations to this year.   That was done through the Public Holidays (Deferment of the Independence and Republic Day – 9th December, 2015 Public Holiday) Proclamation, 2015 - GN No. 537 of 2015 - made under section 3 of the Public Holidays Act wherein His Excellency the President deferred the 2015 Independence and Republic Holiday until 9th December 2016, and declared 9th December 2015 a working day.

Mr. Mutongore, learned counsel, is of the view that the deferment by His Excellency the President did not change 9th December 2015 from a *dies non* to a working day. Respectfully, I do not agree. If anything, the Proclamation stated in no uncertain terms that the 9th December 2015 would be a working day. Let part of the Proclamation speak for itself:

> "... I JOHN POMBE JOSEPH MAGUFULI, President of the United Republic of Tanzania, do hereby proclaim and declare that the Independence and Republic Day – 9th December, 2015 public holiday is deferred until on the 9th December, 2016 and in lieu thereof **the 9th December, 2015 shall be a working day.**"

[Emphasis supplied].

In view of the above, I do not find the basis for Mr. Mutongore's contention that the Proclamation did not make the 9th December 2015 a working day. In a somewhat contradicting manner, Mr. Mutongore avers that he could not file the amended plaint on 9th December 2015 because "all the government offices did not engage in their normal duties but general cleanliness". The learned counsel has, however, not stated clearly if he tried to file the amended plaint on 9th December 2015 but could not for the reason that the officers in the government offices were busy cleaning the environment. I am not prepared to buy this contention for two main reasons; first it is a statement made from the bar and secondly, even if it is true, that notwithstanding, 9th December 2015 does not change to be a public holiday. If anything, the reasons given by Mr. Mutongore explain why the amended plaint was filed out of time; they could be better deponed in an affidavit supporting an application seeking leave of this court to file it (the amended plaint) out of time. To me, by virtue of GN No. 537 of 2015, 9th December 2015 was a working day. It is not therefore an excluded day within the meaning of section 60 (2) of the Interpretation of Laws Act, Cap. 1 of the Revised Edition, 2002.

I am not alone to have this stance. The question whether or not 9th December, 2015 was a public holiday has already been canvassed by this court. An identical situation was the case in *Alli Mohamed Lipemba & Anor Vs Hawa Abdulrahman Ghasia & 2 Others*, Misc. Civil Application No. 25 of 2015 and *Perntels Company Limited Vs the Public Procurement and Appeals Authority & Anor*, Miscellaneous Commercial Cause No 315 Of 2015 (both unreported decisions of this court) wherein the

court held that 9th December 2015 was a not a public holiday by virtue of GN No. 537 of 23rd November, 2015.

In **Hawa Abdulrahman Ghasia**, for instance, the applicants were supposed to file their application by 9th December 2015 but could not because the court registry was, allegedly, closed and that they were told by the court officers they found within the court precincts that they were only assigned cleaning duties for the day and not ordinary court work. They also argued that even if their papers were accepted by court officials, they would still have to pay fees through the National Micro-Finance Bank (NMB), which was also closed on that day. Refusing the explanations, this court (Dr. Twaib, J.) observed:

> "... these statements of fact can only amount to an attempt by the applicants to explain their delay. Considered against the legal position that the day was officially a working day, these facts as narrated by the applicants cannot simply be assumed or taken judicial notice of. They should have been given in a sworn affidavit as required by law, which could only have legitimately entered the court's records by way of a chamber summons for extension of time."

Having not sought and obtained leave of the court to file the application out time, the court proceeded to dismiss the application for being barred by time.

The same was the case in the **Perntels** case wherein this court (Songoro, J.) dismissed an application which ought to have been filed on 9th December, 2015 but was filed on 10th December, 2015 under the pretext that the former

date was a *dies non* and therefore ought to have been excluded in the computation of the timeframe within which the application ought to have been filed.

The foregoing cements my finding that 9th December 2015 was not a *dies non jurisdicus* as Mr. Mutongore would want this court to find. The amended plaint was therefore filed one day out of time without leave of the court and is therefore expunged from the record of this case. As the point has been raised by the court *suo motu* and the defendants did not enter appearance, I make no order as to costs.

Order accordingly.

DATED at DAR ES SALAAM this 30th day of June, 2016.

J. C. M. MWAMBEGELE

JUDGE