

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

MISCELLANEOUS CIVIL APPLICATION NO.346 OF 2016

*(Originating from the High Court at Dar es Salaam Civil Revision  
No. 38 of 2015 in respect of Mkuranga Civil Case No. 4 of 2010)*

THE DIRECTOR, MKURANGA DISTRICT COUNCIL.....APPLICANT

VERSUS

AUTOMATE LIMITED.....RESPONDENT

R U L I N G

*29 May & 20 July 2018*

DYANSOBERA, J.:

In this application filed under section 14 (1) [Cap.89 R.E.2002] and section 95 of the Civil Procedure Code [Cap. 33 R.E.2002] and any other enabling provisions of law, the applicant is seeking against the respondent the following orders:

- 1.That this Honourable Court be pleased to extend time for the filing of the application for restoration of Civil Revision No. 38 of 2015
- 2.If the first application is granted, the Honourable Court be pleased to restore Civil Revision No. 38 of 2015.

3. Costs of and incidental to this application be costs in the main cause.

4. For any other order(s) as this Honourable court may deem fit and just to grant.

In support of the application an affidavit has been filed by Salum Ally Papen, the applicant's District Solicitor.

The application has been resisted by the respondent whereby through the counter affidavit affirmed by Zainab Nkya, the respondent's Principal officer, most of the contents of the affidavit have been denied.

The brief historical background of the matter is axiomatic. The parties to this matter had entered into a contract whereby the respondent was awarded a tender for collection of revenues from marine, agriculture and forest products. However, the contract was breached. The applicant issued a notice of termination of the contract. The respondent instituted Civil Case No. 4 of 2010 before Mkuranga District Court claiming damages for breach of contract. The suit was heard ex parte and the respondent carried a day. The applicant's efforts to have the ex parte judgment set aside vide Misc. Civil Application No. 1 of 2014 were unsuccessful as the application was struck out due to improper citation. The deponent's predecessor instituted Civil Revision No. 38 of 2010 which was assigned before Hon. Kitusi, J.

The applicant's deponent, upon taking over the office and unaware of that Civil Revision No. 38 of 2010, filed an application for extension of time to appeal. the

application was registered as Misc. Civil Application No. 148 and assigned to Hon. Mkasimongwa, J.

Upon discovery of the existence of that other application which was later dismissed, the applicant successfully requested that the application e.g. No. 148 of 2016 to be struck out so that necessary steps could be taken to rectify the situation. Consequently, the applicant filed this application, the subject of this ruling.

The reasons given in support of the application are first, that the applicant was not notified on before whom the matter had been assigned. Second, that there was no notice of hearing served on the applicant and third, that there are serious issues of law requiring to be determined by the court upon grant of extension and at the hearing of the revision.

At the hearing of the application, Mr. Peter Timothy, learned advocate represented the applicant while the Mr. Francis Mgare, learned counsel stood for the respondent.

Counsel for the applicant expounded on the reasons for the application set forth in the affidavit.

Replying, Mr. Francis Mgare prayed the court to dismiss the application on the ground that it was misconceived. He said that for the court to grant the application for extension of time it has to consider whether there are sufficient reasons not only for the delay but also for extending time. According to him, the assigned reasons do not meet the criteria. He explained that after filing the civil revision, the applicant was

required to make a follow up the case to know before whom it had been assigned instead of waiting for the court and that the failure amounts to negligence which is not sufficient reason. To buttress this argument, counsel for the respondent referred this court to some authorities.

According to the conditions, laid down by the Court of Appeal of Kenya in the case of Kenya **Commercial Bank Limited v. Kenya Planters Cooperative Union** (2013) 1 EA at p. 140 where it was held that:

"It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matter which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay, secondly, the reasons for the delay, and thirdly, (possibly), the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the respondent if the application is granted"

It is the procedure that after the matter is admitted in court and necessary fees are paid, that matter is assigned to the respective judge to handle it. The assignment is usually done by the Judge in charge of the respective station or his acting unless the matter is filed in the main registry where the Principal Judge is the assigning judge. When making assignment, the assigning judge has no obligation to notify the parties on to whom the matter has been assigned. However, after

the assignment, the assigned and presiding judge is duty bound to notify the parties of the steps intended to be taken and this is done by way of summons. The applicant said that no summons was served on them. This fact apart from not being controverted, seems to be sound. In such a case, it was difficult if not impossible for the applicant who did not know to whom their application was assigned, to gauge when their application was coming for hearing. It is evident that when the application was dismissed, the applicant was condemned unheard and therefore, denied a fundamental principle of natural justice which emphasizes that no person should be condemned unheard.


Whether or not there are serious issues to be investigated and determined by the court, that can only be determined after time has been extended and the application is heard.

For the reasons given above, I find the application with legal merit and the same is granted. Time to file application for revision is granted and the applicant should file the application within fourteen (14) days from today.

Costs to be in the main cause.

Order accordingly.




  
W.P. Dyansobera

Judge

20.7.2018

Ruling delivered this 20<sup>th</sup> day of July, 2018 in the presence of Mr. Mgare, learned advocate for the respondent but in the absence of the applicant.



  
W.P. Dyansobera  
Judge