

IN THE HIGH COURT OF TANZANIA

(Dar es Salaam District Registry)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 658 OF 2017

JOBOS & CO. LTDAPPLICANT

VERSUS

SERENGETI BREWERIES LTDRESPONDENT

02/02&02/03/2018

RULING

MWANDAMBO, J

On 20th October, 2017 the Applicant filed an application under section 95 and 96 of the Civil Procedure Code, Cap 33 [R.E 200] for correction of arithmetical error from a consent settlement order issued on 19 June, 2015. The Respondent acting through Mr. Nuhu Mkumbukwa learned Advocate contends that the application is time barred and invites me to dismiss it. This ruling is in respect of the Respondent's preliminary objection.

The Respondent's submission in support of the preliminary objection is premised on item 21 in part III of the schedule to the Law of Limitation Act Cap 89 [R.E 2002] (the Act) which prescribes sixty days for any application whose period of limitation is not expressly prescribed anywhere in the Act or other written law. The learned Advocate argues that despite

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of the fact that regardless a period for instituting an application under section 96 of the CPC is not prescribed under the Act or the CPC, a party seeking to invoke that to have an arithmetical or clerical error corrected as it were in this application must do so within sixty days from the date of the decree sought to be corrected. The learned Advocate seeks support from several decisions of this Court and the Court of Appeal to reinforce his arguments. The said decisions are:-**Tima Haji V Amir Mohamed Mtoto & Another, Civil** Revision No. 61 of 2003, **Zamani Resorts Ltd Vs. Kempinski Hotel Misc.** Commercial cause No. 380 of 2016, **Usangu Logistics Ltd Vs. Attorney General & Another,** Commercial case No. 54 of 2007 **and Tanzania Cotton Marketing Board V. Cogecot Cotton Co. SA,** CAT Civil application No. 60 of 1998 (all unreported). On the basis of the said decisions the learned advocate invites the Court to find the application time barred and dismiss it with costs.

Mr. Andrew Kasaizi learned Advocate for the Applicant takes exception to the preliminary objection and argues that section 96 of the CPC allows the Court to correct arithmetical and clerical error at any time and the 60 days rule under the Act does not apply to the instant application. It is for that reason the learned Advocate argues that the authorities relied upon by the Respondent's counsel have no application in the instant matter.

Mr. Mkumbukwa submits in rejoinder that an argument that an application by a party under section 96 of the CPC can be made at any time is misconceived because that section does not permit a litigant an

unlimited time to apply for correction of defects in decrees particularly where as in this application the Respondents has fully satisfied the same.

From the arguments for and against the Preliminary objection there is not dispute that an application whose period of limitation is not expressed under the Act or any other written law can be made within sixty days. The authorities cited by the Respondent say much. The only dispute is whether the sixty days rule applies to an application under 96 of the CPC. That section 96 provides:-

"Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may, at any time be corrected by the court either of its own motion or on the application of any of the parties"

Under the section the court's power to correct defects in judgments, decree or orders can be exercised where the same arises from accidental omission or slip. The he crucial question for determination in this application is whether that power can be exercised at any time as argued by Mr. Kasiszi and resisted by Mr. Mkumbukwa. A similar argument raised by the Respondent's Advocate arose in **Jewels & Antiques (T) Ltd Vs. National Shipping Agencies Co. Ltd** [1994] TLR 107 in which the Court of Appeal had this to say:-

"On our part we are satisfied that the phrase 'at any time means just that at any time' subject to the rights of the parties, there should be no point in limiting the time in which to correct such innocuous mistakes or errors which are merely clerical or arithmetical with

absolutely no effect on the substance of the judgment. Hence if what was sought in Misc. Civil Application No. 57 of 1993 was merely to correct clerical or arithmetical mistakes arising from an accidental slip or omission, we agree..... that such correction can be made at any time subject.... to the rights of the parties”(at page 110).

In the circumstances, it is obvious Mr. Mkumbukwa’s argument falls on the face of the above decision. I must point out that whether the application is covered under the accidental slip rule or not is a separate issue to be determined on merits.

I appreciate Mr. Mkumbukwa’s argument that the phrase at any time should not be construed to extend beyond the period after a decree is fully satisfied as it were. The decision of the Court of Appeal cited above did not directly address that point but the answer can be derived from Indian authorities discussing section 152 of the Code of Civil Procedure Act V of 1908 from which our Civil Procedure Code traces its origin with the net effect that decisions from Indian superior Courts on similar provisions have a high persuasive value to our courts.

A summary of the authorities can be found at page 950 of *Mulla on The Code of Civil Procedure Code Act V of 1908, 15th Edition by P.M Bakshi, Vol I*. What is gleaned from the said authorities is that amendment of a decree under section 152 can be made at any time including after execution and satisfaction of the decree. I am satisfied that the position taken by the courts in India reflect a correct interpretation of the law

relevant to this this application and so once again, Mr. Mkumbukwa's argument is of no avail

Consequently in so far as the preliminary objection was premised on authorities which have no direct application CPC, I find my hands tied to endorse the submission by the Applicant's Advocate on the authority of **Jewels Antiques (T) Ltd v National Shipping Agencies Co. Ltd** (supra).

In the event the application is hereby dismissed. Costs shall be in the cause. Order accordingly.


L.J. SMwandambo

JUDGE

02/03/2018