

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 381 OF 2018

(From the decision of Bagamoyo District Court at Bagamoyo, A. N Masua RM dated 8th day of January, 2016 in Civil Case No. 04 of 2010)

IHEMBE INDUSTRIES CO. LTD.....APPLICANT

VERSUS

TANZANIA ELECTRICAL MECHANICAL AND ELECTRONICS

SERVICES AGENCY (TEMESA).....RESPONDENT

RULING

Date of last Order: 02/07/2019

Date of Ruling: 30/10/2019

MLYAMBINA, J.

By way of chamber summons made under *Section 14 (1) of the Law of Limitation Act, Cap 89 (R.E 2002)* and *Section 95 of the Civil Procedure Code, Cap 33 (R.E 2002)*, the applicant has sought for this Honorable Court be pleased to extend time within which the applicant may be allowed to appeal out of time against the decision of the Bagamoyo District Court at Bagamoyo dated 8th day of January, 2016 in Civil Case No 04 of 2010.

The application has been supported with an affidavit of Jamhuri Johnson, counsel of the applicant.

The application was vehemently resisted by the respondents through counter affidavit sworn by their counsel one Gratian Mali. From the supporting affidavit, counter affidavit and written submissions, both parties are at per that extension of time can only be granted if the applicant advances sufficient reasons. In the cited case of *Republic v. Yoha Kaponda and 9 Others* (1985) TLR. 84 the Court held:

"In deciding whether or not to extend time I have to consider whether or not there is sufficient reasons. As I understand it, sufficient reasons here do not refer only, and is not confined to the delay. Rather, it is sufficient reason for extending time and for this I have to take into account also the decision intended to be appealed against the surrounding circumstances and the weight and implications of the issues involved."

The applicant has mainly advanced two grounds for this Court to grant the application. The first ground was that the applicant was not aware of the date of judgment of the trial Court. Thus, the applicant became aware during execution stage.

I have had time to verify from records. It appears true as alleged by the applicant, that the applicant never attended the delivery of judgment on 08th December, 2015.

However, the applicant (the defendant before the trial Court) was represented by Jamhuri Johnson the date on which the defence was closed. That was on 25th March, 2015. It is the same counsel who prayed to file final submissions on 15th April, 2015.

It follows true, therefore, as replied by the respondent the argument that the applicant was not aware of the judgement proves its negligence, inaction and lack of due diligence on making follow up of its case. In the case of *Rutagatina C.L.V. the Advocate Committee and another*, Civil Application No. 21 of 2011 (un-reported the Court stated:

"An applicant in an application to take a certain step has to show good cause what prevented him from taking such step within the prescribed time. The question is whether good cause has been given to warrant him extension of time....lashes, mistakes inaction and lack of due diligence in taking an action appropriate step on the part of the applicant will negate sufficient cause."

It is the finding of this Court that the applicant having participated the trial from commencement of prosecution case to closure of defence case, had a sole duty of making follow up of the judgment date.

Indeed, there are no good reason as to why the applicant remained docile from 8th December, 2015 to 9th July, 2018 when the applicant filed this application. The applicant was duty bound to account for each day of delay. In *Al-imran Investment Ltd v. Print Park Tanzania Ltd and Another*, Misc Civil Cause No. 128 of 1997 (unreported Nsekela J. as he then was held:

In order for the applicant to have benefit of section 14 (1) the applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation”

The other reason advanced by the applicant was that of illegality. Under paragraph 5 and 6 of the supporting affidavit, the applicant testified:

1. That, after reading the said judgement intensively, we are of the strong view that the decision of the district Court is erroneous and we are intending to appeal against the whole decision to this honorable Court.

2. That, the trial Court magistrate filed to state in his decision how he reached the conclusion that the plaintiff proved the case to the required standards, further that the purported judgement does not have the necessary legal requisites, to be called a judgement, and damages where not proved to the required standards.


As replied by the respondent, the afore affidavit evidence do not suggest specifically the illegality committed by the trial Court. As cited, in the case of *Zuberi Nassor Mohamed v. Mkurugenzi Mkuu shirika la bandari Zanzibar*, Civil application no. 93/15 of 2018 and in the case of *Lyamuya Construction Co. Ltd as cited in the case of Omary Ally Nyamalege and 2 others v. Mwanza Engineering Works* Civil Application No. 94/08 of 2017 (unreported) the Court emphasized that;

"... such point of law must be of sufficient importance and I would add that it must be apparent on the face of the record, such as the question of jurisdiction not one that would be discovered by long drawn argument or process"

In the impugned decision, it is apparent at page 3 of the typed judgement that the applicant herein admitted the claims. The judgement was entered on admission.

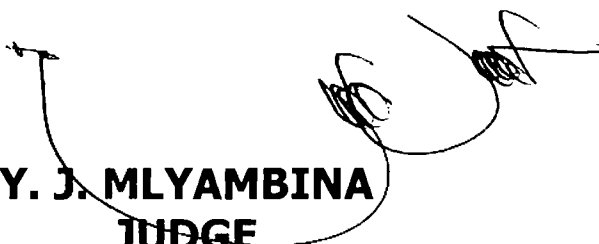
Even if I could agree with the applicant that damages were not proved to the legal standard, the plea of illegality can only be accepted as sufficient ground for extension of time if the applicant acted diligently. (See *Etiennes Hotel v. National Housing Corporation*, Civil Reference No. 32 of 2005 CAT).

In the premises of the above, I find this application is devoid of any merits. The application, therefore, stands dismissed with costs. It is so ordered.



Y. J. MLYAMBINA
JUDGE
30/10/2019

Ruling delivered and dated 30th day of October, 2019 in the presence of counsel Ezekiel Joel for the applicant and Irene Msuya legal officer of the respondent.



Y. J. MLYAMBINA
JUDGE
30/10/2019