

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 739 OF 2017

DRTC TRADING COMPANY LTD1st APPLICANT

MARY G. MUSIRA.....2nd APPLICANT

VERSUS

JUMA MASOUD.....RESPONDENT

Date of last Order: 18/10/2019

Date of Ruling 31/10/2019

R U L I N G

MGONYA, J.

Before me is an Application with a prayer seeking an extension of time to file a reply to the Petition. Through the Chamber Summons it is evident that the Application is made under the provision of ***Section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2002]***.

The Application is supported by an Affidavit sworn by Joseph Rutabingwa referred to as the Applicant. When the matter came up for hearing on the 22/08/2019, I ordered the matter be

disposed by way of written submission for the matter was under special session, and both Counsel had no objection.

The Applicants in this Application as appeared above were represented by **MR. RUTABINGWA** learned Advocate and the Respondent being represented by **Mr. ALIPO ATUKUNKOLEPO MWAKANYIKA** learned Advocate.

Counsel for the Applicant in the submission submits that, at hand is an Application for extension of **time within which to file a reply to the Petition in Misc. Civil Cause No. 858 of 2016** which is pending for determination before this Court. It is the Counsels averments that the material facts to the Application are as stated under paragraphs **3 to 10** of the Affidavit.

It is in records under paragraph **2 - 5** of the submission the Advocate for the Applicant reiterates the circumstances that took event and caused the failure to file the Reply in time as ordered by this Court. The Court is reminded of the provisions under ***section 14(1) of the Law of Limitation Act [Cap 89 R.E. 2002]*** and the discretionary powers vested upon it on the extension of time upon an Applicant showing good cause.

Moreover it is provided for under paragraph 10 of the Affidavit that Mr. Rutabinga, learned Advocate that the Applicants

were not idle but were continuously in Court seeking for justice for the period from **10th July 2017** to **20th July 2017** when this Application was filed. The Applicants did not sleep on their rights due negligence but were diligently executing their duties.

In reply the Advocate for the Respondent submits that, the Applicant ignored or neglected to file their defense within 14 days. It is their considered opinion that it needs a nerve of a starved lion to ignore a Courts order and under paragraph 2 - 3 at page 2 reiterates as to the delay of the Applicant and that the reasons advanced on arguing that diligence and persistence have always been a sufficient cause for extension of time. If that is the position of law then the Applicants were duty bound to be diligent but unfortunately the Applicants have not measured up to a standard of diligence.

Further the Respondent submits that the arguments set forth by the Applicants, lack merit. There was in action and lapse on the part of the Applicants that goes to the root of the matter that amounts to negligence. And in finality, averred that the actions of the Applicant were reckless for not complying with the order and their case for delay lacks merits to justify extension of time.

Having carefully gone through the submissions by the parties on the prayers sought for before this honorable court it is trite law that the powers upon extension of time is upon the discretion of court and should be handled judiciously. The same has been settled in a number a cases in the Countries jurisdiction. The Applicant is duty bound to state before the court reasons for the delay and to be granted the same one has to have "**sufficient cause**". Sufficient cause has to be intensively established to enable the court exercise its powers on extension of time.

The above position was observed in the case of **REGIONAL MANAGER, TANROADS KAGERA VERSUS RUAHA CONCRETE COMPANY LIMITED, Civil Application No. 96 of 2007, CAT** it was held that:

"..Sufficient reason to extend time the time to file an application what constitutes "sufficient cause", cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that an Applicant must place before the Court material which will move the Court to exercise its

judicial discretion in order to extend time limited by rules”.

The same position was also held in the case ***of RATMA CUMARASAMY and Another (1964) 3 ALL ER 933, Lord GUEST.***

The matter at hand is based on another Misc. Application that is pending before this Honorable Court and the pending Application depends on the outcome of this Application for extension of time, as it appears under **paragraphs 3-10** of the reasons that caused the Applicant to have delayed in filing the Reply to the petition in time.

I being aware of the essence of the principles of natural justice one being the “***right to be heard***”, find it of utmost importance for the pending matter be heard. I do not find myself free of not being bound the “***overriding principles***”, in relation to the Constitution ***Under Article 107 A (e) of the Constitution of the United Republic of Tanzania 1977,*** where the Constitution requires the Court to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice.

It is from the reasoning above, I find reasons advanced by the Applicant to be sufficient ground for extension of time and therefore this ***Application is allowed.***

The Applicant is hereby ordered to file the reply to the petition within 14 days after the delivery of this Ruling.

Each party to bear their own costs.

It is ordered.



L. E. MGONYA
JUDGE
31/10/2019

Ruling delivered in chambers in the presence of the 1st Applicant in person, the Respondent and Ms. Emma RMA, this 31st day of October, 2019.



L. E. MGONYA
JUDGE
31/10/2019