

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 649 OF 2019

(Arising from Civil Case No. 98 of 2014 Ilala District Court)

CHAWATA.....APPLICANT

VERSUS

**BANANA CONSTRUCTOR
LIMITED.....RESPONDENT**

RULING

Date of Last Order: 2/6/2020.

Date of Ruling: 22/07/2020

S.M. KULITA J;

This is an application for an extension of time to appeal to the High Court. It is said to have been made under section 14(1) of the Law of Limitation Act [Cap 89 R.E. 2002] and Section 93 of the Civil Procedure Code [Cap 33 RE 2002]. The application is accompanied with a chamber summons and the affidavit deponed by the applicant's Learned Counsel one Gidion Kaino Mandesi. The said applicant seeks for an order for the extension of time to

file the appeal against the ex-parte judgment and decree of the Ilala District Court in Civil Case No. 98 of 2014.

The application was heard by way of written submissions. The applicant through his Advocate, Mr. Mandesi submitted that the applicant was not aware of the suit filed against him at the Ilala District Court. That the said suit came into his knowledge after the judgment of the said civil suit being delivered in November, 2019 when the plaintiff visited the applicant's premises for valuation purposes so that he could proceed with the execution of the court's decree. Unfortunately, when the applicant went to trial court for inquiries the time for appeal was already lapsed hence this application.

Mr. Mandesi invited this court to apply the provisions of section 93 and section 95 of the Civil Procedure Code. He also stated that the applicant has a good cause to apply for extension of time for the appeal to be heard on merit.

Mr. Mandesi concluded his submission by praying for this court to grant extension of time so that the applicant can appeal out of time as he has shown good cause.

Replying the applicant's submission the respondent through his Advocate Mr. Andrew Abedi Kalesi submitted that the applicant

discovered the existence of the Ex-parte judgement after the lapse of sixteen days. He said that the applicant is duty bound to account for each day of delay, the fact that he has never established that as required by the law the application should not be granted.

Mr. Malesi further submitted that the applicant was duly served with the summons and the court was satisfied on that hence the matter was ordered to proceeded Ex-parte.

Mr. Malesi concluded his submission by praying for the dismissal of the application for lack of merit.

In the rejoinder Mr. Mandesi maintained that the applicant was not aware of the Civil Case No. 98 of 2014 until when the plaintiff visited his premises for execution purposes, and that the applicant never served him with any summons in respect of the Civil Case No. 98 of 2014 as alleged by the respondent. He said that there is no evidence to prove that the said service was duly processed.

Without hitting into the bush I sincerely declare that the application at hand is wrong before this court. The procedure that governs reliefs for the person aggrieved with the ex-parte judgment requires the person against whom the judgment has

been entered to file the application to set aside the said ex-parte judgment before the same court which had entered it. Upon the Defendant/Respondent showing good cause the said court may set aside the ex-parte judgment and the suit is fixed to be heard inter-parties. This is according to Order IX, Rule 13(1) of the Civil Procedure Code [Cap 33 RE 2002]. The provision states;

"In any case in which a decree is passed ex parte against a defendant, he may apply to the court by which the decree was passed for an order to set it aside; and if he satisfies the court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit"

In upshot the application has no legs to stand. It is accordingly **struck out**. The applicant is asked to table the matter at the trial court to seek for the said ex-parte judgment and decree to be set aside if he finds to have good reason(s). As the Respondent had

a duty to raise the objection at the preliminary stage in respect of this legal defect but he remained silent, I grant no order as to costs.



S.M. KULITA

JUDGE

22/07/2020

