

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 752 OF 2018**

*(Arising from Civil Case No. 220 of 2014 in Dar es Salaam Resident Magistrate's Court  
at Kisutu)*

**SAMNA (T) INVESTMENT LTD.....APPLICANT**

***VERSUS***

**FAST FORWARD INTERNATIONAL LTD.....RESPONDENT**

**RULING**

**Date of last Order:** 18/02/2020

**Date of Ruling:** 13/03/2020

**MLYAMBINA, J.**

The applicant has filed this application under *Section 14 (1) of the Law of Limitation Act Cap 69 R.E. 2002 and Section 95 of the Civil Procedure Code Cap 33 R.E 2002*. The application is mainly for orders:

- 1) That, this honorable court be pleased to grant extension of time to applicant herein to file appeal out of time against Judgement and Decree of Resident Magistrate Court of Dar es Salaam at Kisutu in Civil Case No. 220 of 2014 by Honorable Mashauri PRM.
- 2) That, cost for the application be provided for, and;

3) Any other order that this honorable court may deem fit to grant.

The application is supported with an affidavit of one Samwel Sule Nakei the Principal Officer of the applicant.

The basic reasons that can be gathered from the supporting affidavit and amplified in the written submission for extension of time are namely:

*One*, the judgement was delivered on the 15<sup>th</sup> December, 2017 in favour of the respondent. *Two*, in the said matter the applicants were represented by Advocate Godfrey Gimeno and another whilst the respondents were represented by advocate Wilson Ogunde. *Three*, on different occasions the applicant followed up with the Applicant's Advocate (Mr. Mwarabu) so as to determine the status of the matter and he persistently told them that the same was still subsisting and that there was nothing to be worried about.

*Four*, after a long wait, without proper communication with the applicant's Advocate (Mr. Mwarabu), the applicant decided to look for the respondents, advocate in September, 2018 and inquired about the status of the matter. That is when it came to the knowledge of the applicant that the same has been concluded in favour of the respondent since 15<sup>th</sup> December, 2017.

*Five*, the applicant asked the respondent's advocate for a copy of the decree and the same was availed to the applicant through the applicant's office email.

*Six*, aftermath the applicant decided to hire another advocate so as to continue with the case, but the process of procuring service from another counsel took longer than expected hence leading to delay of filing an appeal in time.

*Seven*, that the delay in lodging an appeal has not been caused by neglect, ill will negligence or fault on part of the applicant.

The respondent objected the application by filing a counter affidavit sworn by Wilson Edward Ogunde, Advocate of the respondent.

In counter affidavit, the respondent stated *inter alia* that at Kisumu RM'S court, the applicant enjoyed the services of Advocate Deo Mwarabu and not Godfrey Gimeno.

The respondent went on to state that the applicant was aware of the case and its outcome, and if not, it was due to the respondent's own negligence and inaction.

Further, the respondent asserted that the communication with the applicant via email was solely on demand for payment of the decretal sum and nothing more. The respondent did insist that the

applicant acted negligently and he never accounted for each day of delay.

In their written submission both parties do not dispute that extension of time cannot be claimed as a matter of right. There must be sufficient cause. In backing up such position, the applicant invited this court to read the decision in the case of *Blue Line Enterprises Ltd v. East African Development Bank*, Misc. Civil Cause No. 135 of 1995 High Court at Dar es Salaam. *Allison Sila v. THA*, Court of Appeal of Tanzania, Civil Reference No. 14/1998 at Dar es Salaam; and *Caritas Kigoma v. K.G. Lewis Ltd*, Court of Appeal of Tanzania at Mwanza.

The applicant went on to cite the case of *NEMCO Limited v. Mollo Construction Co. Ltd*, Civil Revision No. 29 of 1997 in which my brethren Mackanja, Judge was of the view that, the principal behind Section 14 of the Law of Limitation Act No. 10 of 1971, is that its application should advance substantial justice when negligence, nor laxity, nor laches nor indolence, nor want of bonafides, is imputed on the applicant.

It was further submitted by the applicant that there is serious illegality in the proceedings and judgement which amounts to sufficient cause. Moreover, the intended appeal has prospects of

success and both justice and common sense calls for the granting of the sought leave.

In reply to the applicant's written submission, the respondent stressed that a party retains the paramount duty to closely follow up his case even upon engaging an advocate. In this case, there is no proof that the applicant made follow up with Advocate Mwarabu.

On that foot, the applicant invited the court to go through the decision in the case of *Maneno Mengi Ltd and 3 Others v. Farida Said Nyama Chumbe and the Registrar of Companies* (2004) TLR 391 where at page 392 Court of Appeal Dar es Salaam in refusing the application held *inter alia* that; an advocates lack of diligence and inaction is not good ground for extension of time.

On the point of accounting each day of delay, the respondent cited the case of *Omary Ally Nyamalege and 2 Others v. Mwanza Engineering Works*, Civil Application No. 94/08 2017 Court of Appeal of Tanzania at Mwanza in which the court ruled that:

It is a settled law that an application for extension of time the applicant has to account for each day of the delay.

In countering the alleged point of illegality, the respondent cited the case of *Omary Ally Nyamalege's (supra)* in which at page 13 the court held:

Without the details of the alleged illegalities, it is impossible to determine whether the said illegalities are apparent on the face of record and that they are of sufficient importance to merit the attention of this court.

I have considered the evidences and the submissions of both sides along with the entire record and the principles governing extension of time. I must observe that the applicant miserably failed to account for each day of delay. In the case of *Tanzania Coffee Board v. Rombo Millers Ltd, Civil Application No. 13 of 2015* (unreported) the Court of Appeal of Tanzania held:

Extension of time should be considered on two grounds that every day must be accounted for which the applicant did and the reason for the delay must be sufficient.

I may add that in accounting on what the applicant did there are must be truth of such facts. In this case, the judgement was delivered on 15<sup>th</sup> December, 2017, but there are no supporting evidences to show that the applicant was making follow up of its case to its Advocate.

Even if there could be such proof, the applicant has not accounted each day of delay up to 28<sup>th</sup> November, 2018 when it filed this application.


Indeed, if true the applicant was not aware of the outcome of the case, one should have expected the application to be supported together with an affidavit of Deogratias Mwarabu, Advocate.

If true Deogratias Mwarabu, Advocate acted negligent in informing its client, the court should have expected proof of legal action taken by the applicant as against Deogratias Mwarabu, Advocate.

Besides, negligence, indolence, inaction or lack of diligence of an Advocate in taking a certain step has never been a good cause for extension of time. The applicant duty of making follow up of his/its case is not exonerated by mere fact that it has engaged a lawyer. Both of them have such duty on their capacities as client and as duly engaged lawyer respectively.


Above all, the applicant has not pointed the alleged illegalities. Even if *plea* of illegality is accepted principle as sufficient ground for extension of time, such illegality is subject to diligence. (see *Etiennes Hotel v. NHC*, Civil Reference No. 32 of 2005 Court of Appeal of Tanzania).

In the event of the above, the application is hereby marked dismissed with costs for lack of merits.



**Y. J. MLYAMBINA**  
**JUDGE**  
**13/3/2020**

Ruling delivered and dated 13<sup>th</sup> March, 2020 in the absence of the applicant and in the presence of Sylvester Korosso, Advocate holding brief of Wilson Ogunde, Advocate for the respondent.



**Y. J. MLYAMBINA**  
**JUDGE**  
**13/3/2020**