

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO 180 OF 2020

(Emanating from Civil Case No. 149 of 2018)

WIAFRICA TANZANIA LIMITED.....APPLICANT

VERSUS

INFRANETICS LIMITED.....RESPONDENT

RULING

Date of last Order: 21/07/2020

Date of Ruling: 07/10/2020

MLYAMBINA, J.

The application before the Court is by way of Chamber Summons made *Under Part III Paragraph 3 to the Schedule of the Law of Limitation Act, Cap 89 and Section 95 of the Civil Procedure Code Cap 33 (R.E 2019)*. The main prayer of the Applicant is for an order of extension of time to apply for review of the Consent Judgment and Order of the Court which was derived from the deed of compromise filed on 17th April, 2019.

The application is supported with the affidavit of Pius Mtei, Principal Officer of the Applicant paragraph 2 through paragraph 11 of the supporting affidavits read:

2. That, the Respondent filed a suit against the Applicant vide *Civil Case No. 149 of 2018*, claiming for total payment of USD 162,033,17, arising out of outstanding for execution of project USD 16,422.08, interests for delay of payment 143,611.09, and specific damages USD 2,000 thereof.
3. That, the parties agreed to settle the matter out of Court and accordingly, on 16th of April 2019, the parties entered into a deed of settlement and filed the same before this Honourable Court on 17th of April 2019.
4. That, the Respondent vide Execution No. 39 of 2020 filed an application for execution of the Decree, which has been scheduled for pronunciation of the ruling of the same on 15th of April 2020.

Copy of the application for Execution is hereby attached and collectively marked as Annexure WL-01. And leave of the Court is sought for the same to form part of this affidavit

5. That, there has been cumbersome transformation on legal representation of the Applicant, as the then Advocate, one Safina Hassan who was representing and acting on behalf of the Applicant as inside Company Counsel, dispensed a notice of resignation on 20th of February, 2020, hence left the Applicant unrepresented until 2nd day of March 2020.

*Copy of the Resignation letter is hereby attached and marked as Annexure WL-02.
And leave of the Court is sought for the same to form part of this affidavit*

6. That, for the entire period, up until and after the execution of the Deed of Compromise by the parties, the Advocate representing the Applicant never made any efforts to file the application for Review of the Deed entered between the parties despite of noticing serious errors occasioned during signing and execution of the deed by the parties.
7. That, it was until 2nd day of March, when the Applicant entered into an agreement to hire the services of Advocate Victor Mwakimi of Lyson Law Group (firm) to represent and act on behalf of the Applicant, who also came to notice the legal issues and ambiguous terms occasioned during execution of the said Deed of Compromise.

Copy of the deed of compromise, proceedings and Court orders are hereby attached and collectively marked as Annexure WL-03. And leave of the Court is sought for the same to form part of this affidavit

8. And it was until when we realized that our previous Counsel (Safina Hassan); entered into terms which set us in danger of severe loses against our terms of settlement which, she was supposed to settle at USD 16,000.00 and not otherwise.

9. That, the Applicant entrusted the Counsel believing that she would protect the interests of the Company, and since all case files were being handled and held by her company was not aware of all the terms of the Deed of Compromise until when execution process commenced. Should the Applicant had known of the apparent illegalities and professional negligence in the deed, would have immediately applied for review within time.
10. That, the Deed of Settlement entered upon by the parties and filed to the Court on 17th day of April, 2019 is tainted with the serious anomalies which includes the execution of the deed which I believe was not in accordance with the law.
11. That, the Deed of Settlement was not signed by the Principal Officer of the Company as appearing on the Deed; as it discloses the accurate name of the Principal Officer of the Company but signed by the other person. The application was disputed by the Respondent through the Counter Affidavit of Zawadi Juma Musa, the Principal Officer of the Respondent, it was averred by the Respondent that the Applicant was fully represented on all days of proceedings to wit that; on 6th March, 2020 was represented by one Safina Hassan on 10th March, 2020 the Applicant was represented

by one Victor Mwakimi holding brief of Safina Hassan and on 12th March, 2020 the same Victor Mwakimi Learned Counsel appeared for the Applicant on the ruling day.

The Respondent in reply was of averment that the Applicant knew everything pertaining to the settlement deed, since the deponent himself was the one who signed and executed the deed. Thus, there are no any illegality nor errors tainting the deed of settlement as alleged by the Applicant.

In addition, the Respondent stated that the Applicant was well aware of the terms in the deed of compromise to the extent of endorsing the same. Also, the Applicant is trying to create a defence mechanism so as to pre-empt the application for execution of decree.

Both parties do not dispute that as a matter of procedure, an application for review should be made within 30 days as stated in part III, paragraph 3, of the *Law of Limitation Act, Cap 89*; which provides that:

For an application Under Civil Procedure Code for a review of a Decree, Judgment or Order the period of limitation is thirty days.

Therefore, counting from the Judgment date, that is 17th April, 2019 to the date of filing of the application at issue, that is on the 15th April, 2020, the application has been delayed for over Thirteen (13) months, that is over 490 days.

The main issue is; whether the Applicant has advanced sufficient cause. From the affidavit of the Applicant and submission in chief, the Applicant has advanced four reasons for extension. ***one***, existence of cumbersome transformation on legal representation of the Applicants, as per paragraph 5 of the supporting affidavit. ***Two***, wrong advice from its lawyer, as per paragraph 8 of the supporting affidavit. ***Three***, illegality of the deed of settlement for being signed by incompetent personnel, as per paragraph 11 of the supporting affidavit. ***Four***, the Deed of Settlement contravenes with the law of the land.

The Respondent largely opposed the application for the reason that ignorance of the law is not a good ground for extension of time. The Respondent cited the case of **Metal Production Limited v. Minister for Lands** (1989) TLR 5 in which Court of Appeal of Tanzania, observed:

...categories of explicable inadvertence causing delay to make an application do not include ignorance of procedure, or blunder by counsel.

The Respondent went on to cite the case of **Calico Textile Industries Limited v. Pyaraesmail Premji** [1983] TLR 28, where it was also observed that:

Failure to check the law is not sufficient ground for extending the period of appeal.

As far as the point of negligence and blunders committed by the Applicant, the Respondent referred this Court in the case of **Inspector Sadiki and Another v. Gerald Nkya** [1997] TLR 290 Court of Appeal of Tanzania where the Court held that:

Error committed by a Learned Counsel is not sufficient reason for extension of time.

In the case of **Regional Manager, Tanroads Kagera v. Ruaha concrete Company Ltd**, Civil Application No. 96 of 2007 Court of Appeal of Tanzania at Dar es Salaam (unreported) held:

What constitutes sufficient reason 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

the Applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by rules.

The Attorney General v. Wafanyabiashara Soko Dogo la Kariakoo Cooperative Society Ltd and 3 Others, Misc. Land Application No. 496 of 2016 High Court of Tanzania Land Division at Dar es salaam (unreported) in which the Court made reference to the Court of Appeal decision in the case of **CRDB (1996) Limited v. George Kilindu**, Civil Application No. 162 of 2006, Court of Appeal of Tanzania at Dar es Salaam (unreported) it was stated:

What constitutes sufficient cause has not been defined but from cases decided by the Court it includes among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the Applicant.

In the case of **Blue Line Enterprises Ltd v. East African Development Bank** Misc. Civil Cause No. 135 of 95 Katiti, J. (as he then was) held that:

It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant these concessions discretionary,

which discretion is to be exercised judicially upon sufficient cause being shown which has to be objectively assessed by Court.

In the case of **NHC and Another v. The National Estates and Designing Consultancy**, Misc. Land Application No. 496 of 2016 High Court of Division at Dar es Salaam (unreported) the Court observed:

As a matter of General Principle, it is in the discretion of the Court to grant extension of time, but that discretion is judicial, and it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily.

It is also true and accepted principle that illegality is a good ground for extension of time. In the case of **TANESCO v. Mufungo Leonard Majura and Others**, Civil Application No. 94 of 2016 Court of Appeal of Tanzania at Dar es Salaam (unreported) in which the Court held:

If the Court feels that, there are other reasons, such as the existence of the point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

However, another very important factor for grant of extension of time is that of accounting for each day of delay and for bringing the application promptly. In the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), at page 6-7 the Court had this to say:

It is in the discretion of the Court to grant extension of time, but that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated;

- a) The Applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The Applicant must show diligence, and not a path, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) If the Court feels that there are another sufficient reasons...*

In the instant case, the Applicants has labored a lot to establish the illegality in the deed of settlement. I do agree that illegality is a good ground for extension. However, Illegality is subject to diligence as it was held in the case of **National Housing**

Corporation v. Ettiens Hotel, Revision No. 10 of 2005, Court of Appeal of Tanzania (unreported).

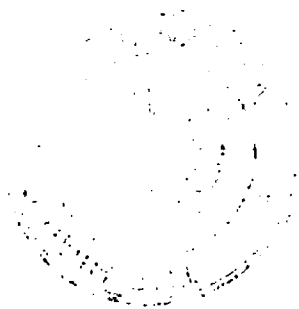
The Applicant has not accounted for each day of delay of about 490 days. Even if the Applicant could have accounted for, there are no enough evidence to prove that the Applicant has taken legal action against the people whom the Applicant alleges to have committed illegal actions in entering settlement deed. To that effect, the Court can safely reach a conclusion that the Applicant is using delay and technicalities to avoid enforcement of the consent decree.

In the circumstances, the application is dismissed with costs for lack of merits.



Y. J. MLYAMBINA
JUDGE
07/10/2020

Ruling delivered and dated 7th October, 2020 in the absence of the Applicant and in the presence of Jesca Chuwa, Legal Officer of the Respondent.



Y. J. MLYAMBINA

JUDGE

07/10/2020