

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC CIVIL APPLICATION NO. 16 OF 2020

(Originating from Civil Case No. 1 of 2019 of the High Court
of Tanzania at Dodoma)

DEEP QUARRIES LIMITED APPLICANT

VERSUS

IKUTI INVESTMENT LIMITEDRESPONDENT

1/12/2020 & 15/12/2019

RULING

MASAJU, J

The Applicant Company, Deep Quarries Ltd, by way of Chamber summons Application made under section 14 (1) of the Law of Limitation Act, [Cap 89 R.E 2019] seeks extension of time to file Application to set aside dismissal order dated the 10th day of December, 2019 in Civil Case No. 1 of 2019 between her and Ikuti investment Ltd, the Respondent. The Chamber Summons is supported by the Affidavit sworn by Rabinder Singh

Jabbal who is the Director of the Applicant Company. The said Affidavit gives the background and the reasons for the Application. That, the delay in filing the Application for setting aside the dismissal order was due to his illness and want of information from the Advocate, Mr. Ezekiel Njulumu, who had been representing the company. The said grounds are in paragraphs 6 – 11 of the affidavit. There is documentary evidence to the Director's illness.

The Respondent on her part contests the Application and there is a Counter Affidavit sworn by Bernard Stephen, her learned counsel, to that effect. In paragraph 7, the Respondent takes issues with the reasons given by the Applicant, particularly, on the alleged illness by the Applicant Company's Director. The Respondent however, does not contradict the Applicant's reason on the then Applicant Company's learned counsel, indiligence on appearance in Court and advising the Applicant Company's dismissal of her suit.

When the appeal was heard before the Court on the 1st day of December, 2020, the learned counsel, Godfrey Wasonga, appeared for the

Applicant Company, whilst the learned counsel, Manyama Nyambasi appeared for the Respondent Company. The parties adopted their Affidavit and counter affidavit to form part of their submissions in support of, and against the Application respectively.

The Applicant also drew the attention of the Court to **Mobrama Gold Corporation Ltd V. Minister for Energy and Minerals & others [1999] TLR 425** where the Court held that:

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case as the Applicant's delay does not constitute a case for procedural abuse on contemptuous default and because the Respondent will not suffer prejudice, an extension should be granted"

The Applicant prayed the court to grant the Application so that her suit can be heard on merit.

The Respondent resisted the Application by citing **Ngao Godwin Losero V. Julius Mwarabu (CAT) Civil Application No. 10 of 2015 Arusha Registry (Unreported)** and **Ihembe Industries Co. Ltd V. Tanzania Electrical, Mechanical and**

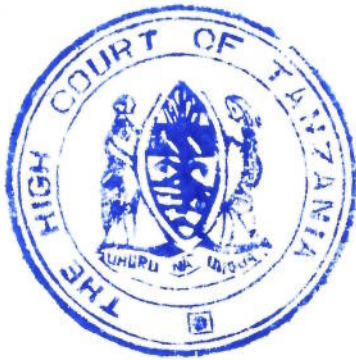
Electronic services (TEMESA) (HC) Misc. Civil Application No. 381 of 2018, Dar es Salaam Registry (Unreported) on the guidelines that should be considered by the Court in Application for extension of time to lodge in the Court available legal remedies. The Respondent prayed the Court to dismiss the Application with costs accordingly.

That said, the Court is of the considered position that when the law provides for Application for legal remedies such applications are to be decided essentially on the basis of evidence available in the form of Affidavit and Counter Affidavit accordingly, which pleadings give evidence for, and against such Applications. Since it is a matter of evidence (fact) not law, that is why it is judicious discretion of the Court to decide on each application on its own merit because the factual evidence differ from one case to another, the overriding objective thereof being administration of justice in such a way that a person who takes his dispute to the Court of law and the parties thereof should be heard substantially in respect of the dispute before the court of law, hence Article 13 (1) & (6) (a) of the Constitution of the United Republic of Tanzania, 1977. The Court should consider,

inter alia, whether or not condemning the party whose learned counsel has been indiligent meets the ends of justice when considering application of this nature. The Court in this particular Application is of the considered position that the Applicant should not be penalized for indiligence of her then learned counsel. That is to say, a party's right to be heard should not be denied due to one's learned counsel indiligence unless it is proved beyond reasonable doubt that a particular party had a hand in indiligence of his learned counsel as well. That said, in this particular Application the Applicant's learned counsel indiligence in handling the suit that had been instituted by the Applicant has not been seriously contradicted by the Respondent in form of evidence. The Applicant Company's Director illness has been supported by documentary evidence to that effect. The Court therefore finds that the two grounds constitute reasonable or sufficient cause for granting the Application accordingly.

The Application for extension of time the Applicant to file Application to set aside the impugned dismissal order is hereby granted accordingly. The intended Application, if any, shall be filed in

the Court within thirty (30) days of this Ruling. The parties shall bear their own costs accordingly.




GEORGE M. MASAJU

JUDGE

15/12/2020