

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 136 OF 2019

(Arising from the Judgment and Decree of the District Court of Kinondoni Hon. F. Moshi,
SRM delivered on 14th September, 2018 in Civil Case No. 45 of 2016.)

NATIONAL MICROFINANCE BANK PLC.....APPLICANT

Versus

NELL GLOBAL ENGINEERING

CO. LTD.....RESPONDENT

RULING

24th December, 2019 - 12th March, 2020.

J. A. DE-MELLO. J;

The Applicant has moved the Court, vide **Chamber Summons** under the provisions of **section 14 (1)** of the **Law of Limitation Act Cap. 89[R.E. 2002]**, for the following prayers;

- 1. That, the Honorable Court be pleased to Extend Time within which the Applicant may file an Appeal to this Honourable Court against the whole of Judgment and Decree of the Resident Magistrate Court of Kinondoni District Court, at Kinondoni.**
- 2. Any other Relief(s) that, the Honorable Court shall deem fit to grant.**

The Application is supported by an Affidavit sworn by **Consolatha Resto**, the **Principal Officer** of the **National Microfinance Bank PLC** Applicant, whereas the Respondent's Counter Affidavit, is as well on record sworn by **Noel Mwakyembe** with no written submissions which were ordered by this Court. I will thus proceed **Exparte** against the Respondent in this state of affairs much as I will, if need arise resort to the Counter Affidavit. Accounting for the merits of this Application, while narrating the historical background of the Application, **Counsel Consolatha** based on the case of **Benedict Shayo vs. Consolidated Holdings Corporation Civil Application No. 366 of 2017 (Unreported)** in reminding facts which Courts discretion is exercised to include; **length of delay, reasons for delay, degree of prejudice to be suffered by the Respondent, diligence, point of law in illegality** alleged. With this he apportions the delay owing to late furnishing of the copies of judgment and decree since, when he requested for the same on the **30th September 2019** and, whose duty lies with the Court as was stated in the case of **Tanzania China Friendship Textile Co. Ltd. vs. Charles Kabweza & Others Civil Appl. No. 62 of 2015**. With no response, the Applicant alleges to have made follow ups, several of them and, only to receive on them on the **11th December 2018**. This then him lead to search and secure an Advocate who took three days to receive instruction following scrutiny of the documents and lodge the pleadings. Other than this, is the illegality of the impugned decision and, on point of law, which Counsel referres, purely on jurisdiction. Similarly, is the case referred supra that of **Tanzania China Friendship (supra) Principal Secretary Ministry of Defence &**

National Service vs. Devram Valambia [1992] TLR 387, Arugen Chaggan vs. Naushad Mohamed Hussein & Others, Civil Application No. 6 of 2016 and AG vs. Consolidated Holdings & Another Civil Application No. 26 of 2014.

Now for consideration is the reminder that, an Application for **Extension of Time** is a creature of statute and, purely lies within the discretion of the Court but, judiciously exercised. In the case of **Meis Industries Limited and Others vs. Twiga Bankcorp (Misc. Commercial Cause No. 243 of 2015) [2016] TZHC COM D 17**, observed that;

"That is to say, an application for extension of time is entirely in discretion of the Court to grant or to refuse, and that the extension of time may only be granted where it has sufficiently established that the delay was with sufficient cause"

Several and, many similar decisions are in place but, I prefer what the case of **Benedict Mumello vs. Bank of Tanzania, Civil Appeal No. 12 of 2012**, where the Court held that inter alia:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause"

It is trite law and from all the referred cases to include of **Cocacola Kwanza Ltd. vs. Charles Mpunga & 103 Others, Civil Application No. 63/01 of 2017 (Unreported), Ezron Magesa vs. Kasim**

Mohamed Saidi & Ibrahimu Mwankusye, Civil Application No. 148/17 of 2017, not only for advancing good and, sufficient causes but, further on illegality that;

“When there is allegation of illegality it is important to give an opportunity to the party making such allegation to have the issue considered”.

The discretion should be according to the rules of reasoning and justice and not according to private opinion or arbitrary as was guided in the case of, the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustee of Young Women’s Christian Association of Tanzania, Civil Application No. 2 of 2010.**

The guidelines had set the following, namely;

- 1. The Applicant must account for all the period of delay.**
- 2. The Applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.**
- 3. If the Court feels that there are other sufficient reasons, such as the existence of point of law of sufficiency such as the illegality on the decision sought to be challenged.**
- 4. The delay should not be inordinate.**

The case of **Oceanic Bay Hotel vs. Real Insurance Tanzania Limited (2013) EARL 214**, it was held that

“the delay is the delay even if it is a single day of a delay must be counted for.”

Records from the **Kinondoni District Court** are clear that the Judgment was pronounced on the **14th** day of **September, 2018**, while the certified copies of the same was stamped on the **7th** day of **December, 2018**,supplied to the Applicant on the **11th December, 2018**, time which had already lapsed as prescribed by law. This Application was lodged on **22nd** day of **March, 2018**. The delay which the Applicant attributes to, is sourcing an advocate and whose turn took time, three days to be precise, scrutinizing and admitting the same.

The Irregularities and illegality here, as to whether or not the Court has Jurisdiction seems valid and, which can be raised at any stage. I find the Application sound and, grant as prayed.

It is so ordered.


J. A. De Mello
Judge

12/03/2020