

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM  
MISC. CIVIL APPLICATION NO. 806 OF 2018**

*(Arising from Civil Case No. 81 of 2016)*

**BARRETTO HAULIERS (T) LTD.....APPLICANT**

**VERSUS**

**JOSEPHINE E. MWANYIKA .....1<sup>st</sup> RESPONDENT**

**PHILIP E. MWANYIKA..... 2<sup>nd</sup> RESPONDENT**

**RULING**

*Date of Last Order: 21/11/2019*

*Date of Ruling: 13/03/2020*

**S.M. Kulita, J.**

This is an application for extension of time to file a Review at High Court lodged by the applicant one BARRETTO HAULIERS (T) LTD. The application has been made under Section 14(1) of the Law of Limitation Act [Cap 89 RE 2002] and Section 95 of the Civil Procedure Code [Cap 33 RE 2002]. It is supported with an affidavit sworn by one Jude Barretto, the Managing Director of the applicant on the 8<sup>th</sup> day of December, 2018. The said applicant who is unrepresented prayed for the said affidavit to be adopted as a part of the

applicant's submission. The Respondents, JOSEPHINE E. MWANYIKA and PHILIP E. MWANYIKA are represented by the Learned Counsel Mafuru Mafuru, Advocate. The application originates from the Consent Settlement Order of the High Court entered in the mediation on the 17<sup>th</sup> day of October, 2016 in the Civil Case No. 81 of 2016. The application was disposed of by way of written submissions.

In his written submission the applicant, Barretto Hauliers (T) Ltd through its Principal Officer Jude Barretto, the Director stated that the applicant became aware of the consent settlement order dated 17/10/2016 on the 14/11/2018 upon being served with a letter from the respondent's counsel, Mafuru & Company Advocate Advocates dated 5/10/2018 and immediately on 16/11/2018 the applicant wrote a letter to the Deputy Registrar requesting to be supplied with the copies of the proceedings, judgment and decree. The applicant further submitted that immediately after being supplied with the said documents he did file this application for extension of time on the 21/12/2018. The Director, Jude Barretto stated that even the proceedings in the original case file show that there was no principle officer from the applicant who appeared to represent the applicant during the mediation. He further submitted that

Order XXIII, Rule 3 of the Civil Procedure Code [Cap 33 RE 2002] requires the parties to be present during mediation.

In reply thereto Counsel for the respondent prayed for the contents of the counter affidavit to be adopted as part of the respondent's submissions. He further said that parties are bound by their pleadings and evidence in making submissions but the applicant herein preferred the application basing on matters not mentioned in the pleadings. He said that the applicant cannot argue anything out of pleadings. He cited the case of **NATIONAL BANK OF COMMERCE LTD V. SOMO CONTRACTORS LTD [2004] TLR 438** to support his argument. Furthermore the Advocate submitted that the applicant's submissions has no proof that he real came to be aware of the consent settlement order on that 14/11/2018 from the date that was delivered which is 17/10/2016. He said that even if that is the case, in counting the period of delay each number of days for delay in filing the Review within 30 days provided under **Part III, item 3 to the schedule of the Law of Limitation Act [Cap 89 RE 2002]** should be counted for. The time limit starts to run from 14/11/2018, the date that he became aware of the court order but the applicant caused this application to be filed on 21/12/2018, over 30 days

period, leaving alone the non-assigned reasons for such delay. Mr. Mafuru, Advocate stated that even a single day of delay has to be accounted for.

The Learned Counsel Mafuru further submitted that the Applicant being fully represented by the Advocate, Mr. Samwel Shadrack is deemed by law that the date of decree or settlement order was made dully known to the Applicant through the advocate he had engaged who was there before the court representing him. He said that the delay took about two years and one month which is too excessive. Though the court has discretion to grant the application it should do it judiciously as per the facts of the case. He said that the applicant has demonstrated total negligence for delay, apathy and sloppiness for not filing this application in time and without reasons assigned.

Mr. Mafuru, Advocate concluded by praying the application to be dismissed with costs for having no sufficient reasons to support the same.

In the rejoinder the applicant mostly submitted on the merit of the main application of which I am not going to keep

much consideration on it as those arguments have been prematurely submitted.

Among the things that the applicant has relied on in his submissions is that the Mediator Judge was wrong to conduct the mediation and decide the matter in the absence of the Principal Officer from the Applicant's office. The applicant added that the Board Resolution had not instructed the Advocate to settle the matter and sign the Consent Settlement Order. But when you go through that submission you can find it touching merits of the intended application for review which is not an issue for consideration in this application for extension of time.

According to **Part III, Item 3 to the schedule of the Law of Limitation Act [Cap 89 RE 2002]** the application for Review is supposed to be filed within 30 days period from the date that the Order was issued, that is from 17/10/2016 for this matter. However one may seek for extension of time under Section 14 (1) of the Law of Limitation Act if it happens that he has delayed to lodge the said application for review but he has sufficient reasons for the delay. In the said application for extension of time the applicant is not prohibited to mention the merits of his intended application/appeal so as to highlight the

court that the application/appeal he intends to file is meritorious. The likelihood of succeeding in the intended application is ***among the things that the court should consider in granting the application*** as it was held in **LYAMUYA CONSTRUCTION COMPANY LTD VS. BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, Civil Application No.2 of 2010 (Unreported)** which provided the guidelines for the application for extension of time to be granted, the likelihood of success in the intended application/appeal due to the existence of points of law to be challenged being one of them. In the said case it was held;

- (i) *The applicant must account for all the period of delay.*
- (ii) *The delay should not be inordinate.*
- (iii) *The applicant must show diligence and apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (iv) *If the court feels that there other sufficient reasons such as the **existence of point of law of sufficient importance, such as illegality of the decision sought to be challenge. (emphasis is mine)***

Therefore the likelihood of success in the intended application should not be the core reason in the application of extension of

time as it alone cannot make the court to grant the application if the grounds for delay are not sufficient. The most important thing should be the reasons for delay of which should be reasonable and sufficient enough for the court to grant the application. Under Section 14(1) of the Law of Limitation Act this court is vested powers to extend time to file application out of time but there must be reasonable or sufficient cause submitted by the applicant before the court. The section states;

*"..... The court may, **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the said period of limitation prescribed for such appeal limitation prescribed for such appeal or application"*  
**(emphasis is mine)**

The term "*reasonable or sufficient cause*" has not been interpreted there in the statute but it has been clarified in several decisions of the Court of Appeal to mean the situation in which the Applicant had no powers or influence to enable the necessary steps to take place in time for the application

or appeal to be lodged in time. The applicant must have established that he has acted diligently, reasonably and promptly to make sure that he lodges the appeal in time. See the case of **BRAITON SOSPETER @ MZEE & TWO OTHERS V. R, Criminal Appeal No. 358 of 2009 (unreported)** and **BENEDICT MUMELO V. BANK OF TANZANIA, Civil Appeal No. 12 of 2002, CAT at Dar es Salaam (unreported)**.

As for the matter at hand the only relevant submission by the Applicant's Counsel is the fact that the Applicant was unaware of the said consent settlement order dated 17/10/2016 until 14/11/2018 when he did receive a letter of notice from the Respondent dated 5/11/2018 informing the Applicant about that issue.

The applicant alleged that he was unaware of the consent settlement order issued on the 17/10/2016. Though there is no proof on that as the period exceeding two years, that is from 17/10/2016 when the order was issued to 14/11/2018 when the Applicant became aware of the order, is so great for the applicant to be unaware of what is going on with his case. It doesn't make sense that the applicant stayed for all that long time without consulting his lawyer so as to know the progress



of his case, and if that is the case it is a grave rate of negligence on his side.

Worse enough the applicant pleaded and submitted that he came to note that there was such a consent settlement order on the 14/11/2018 but came to file this application on 21/12/2018, that is over one month later and he said nothing about failing to file this application during the prescribed period of 30 days from that 14/11/2018. Therefore, even if we disregard the date that the court order was delivered, that is 17/10/2016 for the reason that he was unaware of it, still the applicant stayed for over 30 days period before he came to file this application. In his submission the applicant stated that on 16/11/2018 he wrote a letter to the Deputy Registrar requesting to be supplied with the copies of proceedings, judgment and decree but he never stated as to how long it took for the Deputy Registrar to supply him with the said documents. As the applicant never complained to have been supplied the documents in delay the assumption is that he was supplied immediately after the request. It is a settled position of the law that any applicant seeking for extension of time to file application/appeal under **Section 14(1) of the Law of Limitation Act [Cap 89 RE 2002]** has to account for the

delay of each day. Indeed the Court of Appeal has reiterated that position in numerous cases and I wish to refer the case of **BUSHIRI HASSAN V. LATIFA LUKIO MASHAYO, Civil Application No. 03 of 2007 (Unreported)** where the court of Appeal stated;

*".....Delay of even a single day has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken" [emphasis is mine].*

In upshot I don't see any reasonable ground established by the Applicant to convince the court to grant the application. It is accordingly dismissed with costs.



**S.M. KULITA**

**JUDGE**

**13/03/2020**