

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 188 OF 2019

(Originating from Judgment and Decree of Resident Magistrate's Court of Mwanza at Mwanza (Hon. R. M. Ngimilanga, SRM) dated 14th December, 2018 in RM. Commercial Case No. 62 of 2017)

SHINYANGA INDUSTRIAL EQUIPMENT LIMITED APPLICANT

VERSUS

SASA KAZI FUEL LIMITED RESPONDENT

RULING

06 & 14/05/2020

RUMANYIKA, J.:

The application is for extension of time within which Shinyanga Industrial Equipment Ltd (the applicants) to appeal against judgment and decree of 14/12/2018 of the Resident Magistrate's Court Mwanza (the court). It is supported by affidavit of Rajesh Kapoor whose contents Mr. Kinango learned counsel for the applicant adopted during the hearing. Mr. V. Kiburika learned counsel appeared for Sasa Kazi Fuel Ltd (the respondents).

When the application was called on 06/05/2020 for hearing, following the global outbreak of Coronavirus pandemic, and pursuant to my order of

25/03/2020 through their mobile numbers 0752845092 and 0742533235 respectively the parties were by way of Audio Teleconferencing heard.

Mr. Kinango learned counsel submitted that having adjourned delivery of the judgment on notice on 14/12/018 but surprisingly on his back it was delivered on 15/12/2018, the applicant followed it up until as late as 15/07/2019 when therefore the copy was ready for collection but already it was at a stage of execution of the impugned decree hence the instant application. That the delay was not due to applicant's negligence.

Having adopted contents of the counter affidavit, Mr. V. Kiburika learned counsel submitted that the applicant's letter of 09/01/2019 presupposed that the applicant was aware of the judgment but he lodged the instant application say 1¹/₂ months and therefore contrary to the law he did not account for each day of the delay (case of **Emil Muyaga V. TTCL**, Civil Application No. 8 of 2011 (CA), unreported.

With regard to points of illegality, Mr. V. Kiburika submitted that in his submissions the applicant's learned counsel did not even mention one. Point of illegality should not be stated in passing it should be sufficiently established. No sufficient ground has been assigned. We pray that the application be dismissed with costs. The learned counsel further contended.

The issue and it is trite law is whether the applicant had assigned any sufficient ground for extension of time. The answer is no. Reasons are: **(i)** the applicant may have had the impugned judgment been delivered on his back yes! But according to his evidence (paragraph 10 of the supporting

affidavit) they became aware of it in January, 2019 however without sufficient explanation they filed the instant application on 16/12/2019 say eleven (11) months later. In other words contrary to the rule in the case of **Henry Muyaga** (supra) among others, unbroken chain of authorities the applicant did not account for each day of the delay **(ii)** they may have been aggrieved yes, but no copy of a notice of appeal if any, was appended or in any way impleaded during hearing of this application **(iii)** now for eleven good months several times and repeated the applicant may have followed up the matter in court all in vain yes, but he did not state when exactly and before who all that was done. It is trite law that as essential and material as the fact was, such details should have been disclosed in the supporting affidavit (see the case of **Henry Muyaga** (supra) **(iv)** whereas I agree with Mr. Kinango learned counsel that alone a point of illegality (paragraph 20 of the supporting affidavit) constituted a sufficient ground for extension of time, this court was not told what was it all about. It is settled law that illegality should not just for the sake be asserted. Once the point is raised, the applicant should sufficiently explain it for the court determination (see the case of **Moses Mchunguzi V. Tanzania Cigarette Co. Ltd**, Civil Reference No. 3 of 2018 (CA) at Bukoba, unreported **(v)**).

The commutative effect of all the above would now suggest that to them everything was ok. The instant application therefore was only prompted by the notice of execution. According to paragraph 13 of the supporting affidavit the notice was served on them in November, 2019 therefore the intended appeal was afterthought.

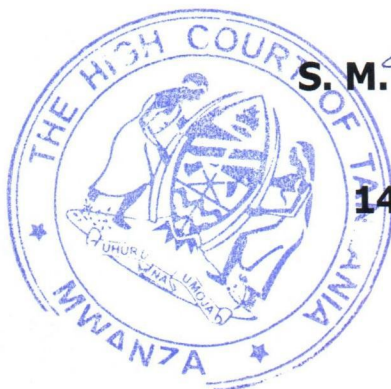
The devoid of merits application is dismissed with costs.

Right appeal explained


S. M. RUMANYIKA
JUDGE

12/05/2020

It is delivered under my hand and seal of the court in chambers this 14/05/2020 in absence of the parties with notice (copie to be supplied immediately).




S. M. RUMANYIKA
JUDGE

14/05/2020