

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)**

AT MTWARA

MISC. CIVIL APPLICATION NO. 29 OF 2020

(Arising from Civil Case No.4 of 2020)

CRDB INSURANCE BROKERS LTD APPLICANT

VERSUS

BRITAM INSURANCE (TANZANIA) LTD1ST RESPONDENT

ABILLAHI KASSIMU MANDEPE.....2ND RESPONDENT

RULING

Final court order on: 20/4/2021

Ruling date on: 22/4/2021

NGWEMBE, J:

This is a ruling born from the application filed in this court on 12th December, 2020. The content of the application is to seek an extension of time within which, to present a written statement of defense against the Third Party Notice served to her by the 1st Respondent.

This application is made under section 95 and Order 1 Rule 17 of the Civil Procedure Code Act [Cap 33 R.E 2019], read together with section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2002. Also it is supported by an affidavit sworn by Mr. John Ignace Kitauli Laswai. However, the application



is resisted by the 1st respondent who filed a counter affidavit affirmed by Mudhihiri Athuman Magee.

On the hearing date, both parties agreed to address the court by way of written submissions, and all complied with the scheduled order of filing their written arguments.

In his written submission, the applicant argued that, he is seeking leave to file his written Statement of Defense against the Third Party Notice filed by the 1st Respondent. He said, for the court to grant orders for extension of time under the Civil Procedure Code, there must be shown good cause by the applicant. To support his argument, he referred this court to the case of **Puma Energy Tanzania Ltd Vs. Karim Aziz Bhanji, Misc. Commercial Application No. 161 of 2019** (unreported).

It was his further argument that, from the circumstances of this matter, the good cause can be shown under the following tests; first prompt and diligently by the applicant in instituting the application for extension of time; second is valid explanation for the delay; and third is the degree of prejudice to the respondent if the application is granted.

Further argued that, the applicant was served with the Third Party Notice on 1st October, 2020 at the Head Office in Dar es Salaam, thus the applicant had to consult and seek clarification and necessary documents from her branch at Mtwara for the same to be furnished to the legal department for preparation and filing of the necessary Written Statement



of Defense. Thus, the whole process consumed time. Rested by a prayer to allow extension of time and the matter be heard inter parties.

In turn, the 1st respondent vehemently opposed the application, by arguing that this court has no jurisdiction to extend time in respect of this matter, since the 28 days from the date of service has already passed. The applicant was served with the Third Party Notice and the plaint on 1st day of October, 2020, so he was required to file Written Statement of Defense within 21 days which expired on 22nd November, 2020. After expiry of 21 days, the defendant was required to seek for extension of time within 7 days as per Order VIII Rule 3 of the Civil Procedure Code.

In the circumstance, after expiry of 21 days and the addition seven (7) days, the court becomes incompetent or lacks jurisdiction to extend time. To support this point, he referred this court to the case of **Hashim Kambi Vs. Rasia Harubu Salum; Misc. Land Case Application No. 43 of 2019**. Added that failure of the Counsel for the applicant to move the court for an extension of time when he appeared on 23rd November, 2020, while already was out of time is a manifestation of negligence. To support this argument, he cited the case of **Tanzania Revenue Authority Vs. David Maeda, Labour Revision No. 97 of 2009** (unreported).

Further that, the time to apply for extension of time expired on 22nd November, 2020 and this application for extension of time was filed on 10th December, 2020, equal to sixteen (16) days of delay. It was his view that the application of this nature can only be prepared within three (3) to four (4) days and not two weeks or more, therefore, the applicant was not

prompt and there is no good reason for her to wait for such long time as stated in the case of **Tirumareddi Rajarao and Others Vs. The State Andhra Pradesh, AIR 1965 AP 388.**

The applicant was required to account for each day of delay. But in his affidavit did not account for any day of delay. To bolster this point, he referred this court to the case of **Real Insurance Vs. Gonzavas Katunzi, Misc. Civil Application No. 724 of 2016** (unreported). Thus urged this court to refuse extension of time and the application be dismissed with costs.

In rejoinder, the applicant argued that the 1st respondent filed her submission on 11th March, 2020 which is out of the scheduled dates without leave of this court. So, the reply submission should be ignored by this court because it was filed three days after the expiry of the date scheduled by this court. The Responded ought to file her submission on 8th March, 2021. He therefore prayed that, the application filed by the applicant be granted.

Having summarized the submissions of both parties and the precedents referred therein, the issue for determination and consideration is whether the applicant advanced good/sufficient reason to warrant this court to grant this application. It is a settle principle of law that extension of time is purely court's discretion. However, that discretion must be exercised judiciously. This position was stated in the case of **Zaida Baraka & 2 Others Vs. Exim Bank (T) Limited, Misc. Commercial Cause No.300 of 2015** (unreported) while quoting the principle developed in 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 (unreported) the Court held:-

"As a matter of general principle, it is 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".

However, what amount to good/sufficient cause is not defined, but it is the duty of the court to treat each case in accordance to the prevailing circumstances. The case of **Emmanuel Bilinge Vs. Praxeda Ogwever & Another, Misc. Application No. 168 of 2012** (unreported) the court held:-

"What constitutes reasonable or sufficient cause has not been defined under the section because that being a matter for the court's discretion cannot be laid down by any hard and fast rules but to be determined by reference to all the circumstances of each particular case"

So, the court should consider all the circumstances led the applicant to delay like the reasons for delay, the length of delay and if the application is granted how much the respondent will be prejudiced.

In the circumstance of this application, the applicant was served with a copy of Third Party Notice on 1st October, 2020 and was required to file Written Statement of Defense within 21 days from the date of service of the Third Party Notice. Counting 21 days from the day of service of the Third Party Notice, they ended up on 22nd October, 2020, but until 23rd



October, 2020, when the matter came for mention before the trial Judge, the applicant was yet to file her Written Statement of Defense.

The reason for delay is disclosed in paragraphs 6 and 7 of the applicant's affidavit that she failed to obtain all necessary documents pertaining to the dispute as quick as possible and that had to retrieve those documents from its insurance department and supply the same to the Legal Counsel for preparation of necessary defenses.

Not only that, but those documents had likewise to pass through administration and management levels, Mtwara Branch as well as to the Legal Department, an exercise which required time.

Also in paragraphs 8 and 9 of the applicant's affidavit, the applicant stated that when the case came for mention on 23rd October, 2020, the Presiding Judge was on other official duties out of the station, therefore the Counsel for the applicant could not seek necessary orders, including an order for extension of time within which, to file Written Statement of Defense against the Third Party Notice before the Deputy Registrar.

It should be noted that the duty of any court of law is to adjudicate disputes fairly and justly among the disputants. I presume the legislature had a reason to enact provisions to allow the court to grant extension of time. The purpose is to ensure that the dispute ends on merits as opposed to ending the dispute on technicalities. This court cannot oust its own



jurisdiction to extend time. Also its discretionary Powers cannot be ousted unless there is clear and unambiguous statute to that effect.

Time always is a point of law and always must be observed strictly. However, in certain circumstances, and for good cause, delays may be justified and this court has discretionary powers so to grant. In the circumstances of this case, it is only wise, just and equitable to allow both parties to be heard interparies. As such I exercise my discretionary powers to grant the sought extension of time to allow the applicant to file Written Statement of Defense.

In totality, I accordingly grant the prayer for extension of time, applicant to file her Written Statement of Defense against the Third Party Notice within seven (7) days from the date of this ruling.

I accordingly order.

Dated at Mtwara in chambers this 22nd day of April, 2021



A handwritten signature in blue ink, appearing to read "P.J. NGWEMBE".

P.J. NGWEMBE

JUDGE

22/4/2021

Court: Ruling delivered at Mtwara in chambers on this 21st day of April, 2021 in the presence of Rose Ndemeleje, Advocate and Anisa Mziray for Advocate Msechu for the 1st Respondent.

Right to appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

21/4/2021