

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION No. 349 OF 2021

ALLIANCE INSURANCE CORPORATION LTD APPLICANT

VERSUS

THE HON. MINISTER FOR CONSTITUTIONAL

AND LEGAL AFFAIRS..... 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

MTUNZI SULEIMAN DAMUZY 3RD RESPONDENT

Last Order: 10/05/2022

Ruling: 15/07/2022

R U L I N G

MANGO, J

The Application before me is for extension of time to file an application for leave to apply for writ of certiorari against an order of the first Respondent, Hon. Minister for Constitutional and Legal Affairs, dated 22nd February 2019. In the particular order, the first Respondent granted extension of time for the third Respondent to commence a suit against the Applicant. The application is by way of chamber summons made under section 14(1) and (2) of the Law of Limitations Act, [Cap.

89 R.E 2019], supported by an affidavit sworn by Hope Joel Paul, the Applicant's Advocate. The Respondents contested the application and they filed counter affidavits to that effect. The first and second Respondents' counter affidavit was sworn by Rose Kashamba, learned State Attorney from the Office of Solicitor General while the third Respondent's counter affidavit was affirmed by Mashaka Ngole, learned counsel for the third Respondent.

The application was disposed by way of written submissions. The Applicant was represented by Dr. Alex Ngaluma, learned Advocate, the first and second Respondent were represented by Rose Kashamba learned State Attorney and the third Respondent was represented by Mashaka Ngole learned Advocate. According to the affidavit and the Applicant's submission the reason that contributed to the delay to file the application for leave is delay to acquire knowledge regarding the existence of the order extending time for the 3rd Respondent to file a suit. According to para 7 of the affidavit, the Applicant became aware of the extension of time order when he was served with the third Respondent's plaint. The disputed order was granted by the first Respondent on 22nd February 2019 and the suit was filed on 21st March 2020. On 23rd March, 2021 the Applicant noted nullity of the order issued by the first Respondent and raised a preliminary objection that

the suit is time barred. The Preliminary objection was overruled on 21st June 2021.

In her reply submission, Counsel for the first and second Respondents acknowledged that extension of time is a discretion of the Court but such discretion need to be exercised judiciously. Citing the case of **Kalunga and Company Advocates versus NBC Ltd** [2006] TLR 235, she submitted that, there must be material facts produced before the court to be considered in exercising its discretion. She also submitted on the settled principle of law that in application for extension of time, the Applicant need to account for each day of delay with a good reason. With regard to the application at hand, she argued that the Applicant has not accounted for the entire period of delay.

The counsel for the third Respondent also submitted on the Applicant's failure to account for his delay with a good reason. He highlighted what transpired before the Applicant filed this application. According to him, the order sought to be challenged via judicial review was granted by the first Respondent on 22nd February 2019. In February 2020 the third Respondent instituted the suit against the Applicant and the plaint was served to the Applicant on 27th March 2020. The Applicant filed his defence on 21st April 2020. The application for extension of time to challenge the order was filed on 22nd July 2021,

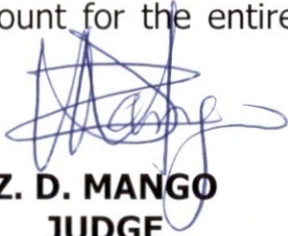
almost one year and six months after the Applicant became aware of the order of the first Respondent. He is of the view that the Applicant has not accounted for his delay with any good cause. The Applicant had no rejoinder.

I have considered submissions by the parties and Court record. It is trite law that, Applicants for extension of time to pursue legal remedies should account for their entire period of delay by good reasons. The principle has been stated in a number of cases including the case of **Lyamuya Constructions Company Ltd Versus Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, Court of Appeal of Tanzania at Arusha, cited by the learned State Attorney. In the application at hand the applicant accounted for the delay from 22/02/2019 to 22/02/2020 as time that he was not aware of the 1st Respondents order. From 23rd February, 2020 to June 21st 2021 as time spent prosecuting a Preliminary Objection against the suit filed by the 3rd Respondent. The Applicant's objection against the order was overruled by the Court on 21st June, 2021. The Applicant filed this application on 20th July 2021. It is not clear what prevented the Applicant to file this Application from 22nd June to 19th July 2021. Since the Applicant has not advanced any reason that prevented him to file this application from 22nd June to 19th

July 2021, I find him to have failed to account for the entire period of delay.

For that reason, the application is hereby dismissed with costs for the Applicant's failure to account for the entire period of delay with a good reason.




Z. D. MANGO
JUDGE
15/07/2022