

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 127 OF 2020

(Arising from Civil Case NO. 79 OF 2019)

**TANZANIA MINES AND & CONSTRUCTION
WORKERS UNION (TAMICO)..... APPLICANT**

VERSUS

**THE BOARD OF TRUSTEE OF THE
NATIONAL SOCIAL SECURITY FUND..... RESPONDENT**

RULING

28/2/2022 & 30/3/2022

MASABO, J.:-

By way of a chamber summons, the applicant has moved this court for an extension of time within which to appear and enter defence in a suit filed as a summary suit under Order XXXV of the Civil Procedure Code [Cap 33 R.E. 2019]. The application is accompanied by an affidavit of one Samwel Said who is identified as acting General Secretary for the applicant. The application was contested by the respondent in an affidavit deposed by Addo November Mwasongwe, state Attorney.

Hearing was ordered to proceed in writing. In a written submission in chief filed by Ms. Linda Mafuru, learned counsel, the applicant reiterated

the averments in the affidavit and proceeded to argue that, a good cause upon which to enlarge the time has been demonstrated. The respondent did not file a reply submission and advanced no ground for default. Thus, she forfeited her right.

I have considered the application, the supporting affidavit and the counter affidavit as well as the submission by Ms. Mafuru. It is a trite rule that, unlike in ordinary suits where the defendant has an inherent right to be heard, in a summary suit, such as the one facing the applicant, such right is not inherent. A defendant intending to object a summary suit is required by law to obtain a leave of court conferring in him the right of audience. This principle is enshrined under Order XXXV rule 2(1) of the Civil Procedure Code which provides that a summary suits;

[S]hall be instituted by presenting a plaint in the usual form but endorsed "Order XXXV; Summary Procedure" and the summons shall inform the defendant that unless he obtains leave from the court to defend the suit, a decision may be given against him and shall also inform him of the manner in which application may be made for leave to defend. [emphasis added].

As per item 1 of the 3rd Schedule to the Law of limitation Act [Cap 89 re 2019] the duration within which to apply for the leave to defend is 21 days. The time may however be extended under section 14(1) of the same law vide which the instant application has been filed. The provision clothes this court with discretionary powers to enlarge the time, but the exercise of the discretionary powers vested so vested need be judicious upon a good cause been established. The duty to demonstrate the good cause upon which the court can exercise its discretion judiciously rests in none other than the applicant (see **Rotnam v. Cumarasamy** (1964) 3 All ER 933). The duty to demonstrate a good cause is mandatory. Even in an uncontested application, the applicant is not relieved of this duty. She must prove to the satisfaction of the court that there is a good cause for the delay. Accordingly, the attendant question for consideration and determination by this court is whether a good cause warranting the exercise of the discretion under section 14(1) of the Law of Limitation Act has been demonstrated.

Much as there is no universal definition of the term good cause, it is a settled law that the existence of a good cause may be established by

considering such factors as the length of delay and the reason for the delay (see **Leornad Maeda and Another V. Ms. John Anaeli Mongi and Another**), Court of Appeal of Tanzania Civil Application No. 31 of 2013 (unreported). Regarding the length of delay, it is trite that the applicant should demonstrate that the delay is not inordinate and must fully account for the duration of delay even if it is just for a single day. As held in **Kyalamali Mathayo V. Republic**. Criminal Appeal No. 15 of 2013 (CAT) at DSM (unreported):

“A good cause is made up when the applicant has shown that the delay is not inordinate and has accounted for all the time of the delay. This has been taken to mean an explanation of the reasons every single delay of the delay and the duration of those reasons. The second principle is that the applicant must so that (sic) did not contribute to the delay by his actions, inaction or conduct. [Emphasis added].

Also see the decision of the Court of Appeal in **Tanzania Rent a Car Limited vs Peter Kimuhu**, Civil Application No. 226 of 2017 and **Bushfire Hassan Vs. Latina Lucia Masava**, Civil Application No. 3 of 2007 (all unreported)

Starting with the length of delay, the record show that summon was issues to the summary for summary suit was issued on 5/11/2019 whereas the present application was filed on 12th March 2020. Certainly, the delay is inordinate and inexcusable unless it is accounted for. In an attempt to account for the delay, the applicant has deponed as follows in the affidavit.

“3. That upon receipt of the pleadings and the summons the officer of the applicant who received them had to disseminate the same to the financial officer of the applicant who received for the satisfaction of the claims in order to avoid unnecessary legal actions.

4. That, while the investigation was going on the applicants financial department was making communication with the respondent to work out on the difference and settle the matter, the belief which was relied upon by the applicant and the same shadowed the applicant’s efforts to file an application for leave to appear and defend the above named summary procedure suit within the prescribed time of 21 days.

5. That the discussion between the applicant and the respondent is still going on however after efforts to settle timely proved negatively, the applicant was forced to engage a law firm styled as Law front Advocates in the late

days to assist in speeding up and realization of the rights of both parties.”

Looking at these paragraphs I hastily hold that the applicant has miserably failed the requirement to account for each day of the delay as the disposition in the above paragraphs suffer from lack of specificity. All they provide is a blanket expiation which does not suffice as a ground upon which to judiciously exercise the discretion under section 14(1) of the Law of Limitation Act. Consequently, the application is dismissed. As the respondent did not file his submission, there will be no orders as to costs.

DATED at DAR ES SALAAM this 30th day of March 2022

X



Signed by: J.L.MASABO

J. L. MASABO
JUDGE

