

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 103/2021**

BLUE PEARL HOTEL & APPARTMENTS LIMITED.....APPLICANT

VERSUS

UBUNGO PLAZA LIMITED.....RESPONDENT

RULING

8/07/2021 & 24/03/2022

E.B. LUVANDA, J

The applicant above mentioned is seeking for an order for extension of time to set aside *exparte* judgment and decree dated 14th February 2019 together with proceedings thereof of Civil Case No. 57/2018. In the affidavit in support of the chamber summons, the applicant grounded among other things that she was granted an order for stay by this Court awaiting outcome of the arbitration, as such could not present an application to defend; none service of amended plaint or summons which amount to denial of her right to be heard; being un aware or none service of summons or notice of the date of *exparte* judgment till on 15/04/2019 when she was served with an application for bill of costs; pegged reason for delay due to introduction of e-filing which took time for her application to be admitted; the *exparte* judgment is tainted with illegality, contain serious allegations and issues on point of law; prosecuting other applications: Misc. Civil Application No. 297/2019 struck out on technicality with leave to refile and

Misc Civil Application No. 582/2019 struckout (caught by the rule of omnibus); delay to obtain ruling for Misc. Civil Application No. 582/2019 from 25/09/2020 when requested for copies till 4/03/2021 when were supplied the same.

In opposition, the respondent countered that there was no any pending arbitration proceedings and the applicant never filed an application for stay of Civil Case No. 57/2018 pending reference to the alleged arbitration proceedings; the matter proceeded *exparte* due to none appearance of the Counsel for applicant without leave of the court which manifest negligence on his part; the applicant was dully served with a copy of a plaint and court summons as per annexure UPL1 to the counter affidavit, but opted not to appear hence *exparte* proof; the applicant advocate was served with a notice of *exparte* judgment; the applications were struckout for failure of the applicant's Counsel to check properly the law; the *exparte* judgment is not tainted with any illegalities or procedural questions; the matter was not tried as a summary suit, rather tried as a normal suit as ordered by the court.

According to the records of Civil Case No. 57/2018 reflect that indeed the applicant had filed an application Misc. Civil Application No. 234/2018 seeking for the matter to be referred to the arbitration, but the same was

struck out on technicalities before Honorable Mgetta, J as reflected in the coram of the main suit dated 7/12/2018 and 12/2/2019. The records of the main suit reveal further that since inception of the matter from the first mention the applicant's Counsel was appearing without miss or skip, till on 7/12/2018 when the Court disclosed that the application mentioned above was disposed, it is when the applicant never showed up. As such the alleged order purportedly stayed the main suit is a mere assumption far from the reality. In other words there was no any bar or impediment for the applicant to seek appropriate remedies to defend the suit. The applicant absconded and chosen not to attend to the proceedings for reasons best known to herself. The applicant did not take any measure to remedy the situation after her application for stay had flopped. Indeed a copy of summons an attachment UPL1 to the respondent's counter affidavit, reveal the applicant was served with summons for orders to file a written statement for defence within twenty one days. Above all, the alleged amended plaint is not in the records, as such the applicant is actually startled.

In the affidavit in support of the chamber summons, the applicant did not attach any document to substantiate that he become aware of *exparte* judgment on 15/04/2019 upon being served the alleged bill of costs. Neither stated specifically as to when she exactly filed applications Misc.

Civil Application No. 297/2019 and Misc. Civil Application No. 582/2019. Actually the applicant intentionally omitted to mention specific dates for each action taken to avoid a possibility of climbing a high mountain of accounting for each day of delay. That is why she is vague and stating on generality. To my view, a party who fail to take legal redress on time or act with deliction, cannot afterward seek sympathy of the court by hiding on the so called illegalities. Above all the applicant was not clear on what she averred in her affidavit that the *exparte* judgment "contain some serious allegations". The applicant did not go further to amplify it or plead the particulars of the alleged serious allegations founded on the *exparte* judgment.

As I have stated above, the applicant was aware of the pending suit, was served, appeared to participate in the proceedings later absconded (no-show), she did not attach documentation to the alleged date she become aware of the *exparte* judgment on 15/4/2019, did not state as to when she filed Misc. Civil Application No. 297/2019 and when it was disposed, neither attached any document pertaining to this application. Equally a date of filing Misc Civil Application No. 582/2019 was not disclosed. Instead the applicant attached a bundle of letters requesting ruling and various reminder thereof in respect of Misc. Civil Application No. 582/2019 solo.

But the applicant did not tell us which rule require for an application for extension of time to be formerly and strictly attached with copies of previous applications which ended to no avail. As stated earlier, an application of this nature one cannot avoid accounting days of delay. The rule is that delay even a single day, has to be accounted for, see **Vodacom Foundation vs Commissioner General (TRA)**, Civil Application No. 107/20 of 2017, Court of Appeal of Tanzania sitting at Dar es Salaam. Therefore, the unexplained delay, at any rate is inexcusable and amount to laxity.

My undertaking is grounded on a fact that the applicant failed to explain as to why she defaulted to appear on 11/2/2019 a date which was scheduled in the presence of her Counsel. It sounds awkward for the applicant to assume that she was excused to appear or make follow up on the matter and take any action to defend the suit, awaiting to be re-summoned.

Above all, the applicant did not give particulars of the alleged delay in filing her application which alleged was occasioned by the introduction of e-filing. The applicant did not plead exact dates she lodged documentations and time upon which she stranded on the alleged jam or technical fault or failure of the newly introduced system of filing electronically. In other words, the applicant was merely alleging without any strict proof.

In passing, I failed to comprehend or appreciate the point of preliminary objection which was raised by the respondent. Therefore is overruled.

I appreciate for labored submissions specifically Mr. Shalom Samwel Msakyi learned Advocate for the applicant including cases cited for aspiration and Mr. Mudhihir Athuman Magee learned Counsel for the respondent, for their argumentative submission in support and against the merit of the main application.

As a matter of proper records, I wish to make clear reasons for delay of this ruling. As per the court plan/schedule, the date of final hearing was on 8/07/2021 when the applicant was supposed to file a rejoinder and ruling was slatted on 13/7/2021. As transpired above, the applicant raised some facts in the affidavit which necessitated for the file of the main case to be available for referencing of some events to enable craft the ruling. Unfortunate the same was not forthcoming until early this year when I opted to return and handover the file of this application to the Deputy Registrar as a pressure for the original file of the main suit to be traced. Happily the same was ultimately found and thereafter both files handed over to me on 28/02/2022. As such delay to craft the ruling was due to the above reason.

The application is dismissed with costs.



E.B. Luvanda
Judge
24/03/2022