

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SAAAM SUB REGISTRY)  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 360 OF 2021**

**BEFAO& CO LTD .....APPLICANT**

**VERSUS**

**KNIGHT SUPPORT.....RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J.**

This application was filed under the provisions of Sections 14 of the Law of Limitations Act, Cap 89 R.E. 2019 ("The LLA") read together with sections 3A, 3B and section 95 of the Civil Procedure Code Cap 33 R.E. 2019. The applicant is moving the court for both ex- parte and inter parties' orders as follows:

**Ex Parte**

1. This Honourable Court be pleased to dispense with the requirement issuance of Notice to the Respondent.

2. This Honourable Court be pleased extension of time to appeal against Ruling and order of the District Court of Kinondoni in Civil Case No. 154 of 2018 given by Hon. Jacon RM on 15<sup>th</sup> December 2020.
3. Any other Relief/ Reliefs which Honourable Court may deem fit to Grant.

### **Inter Parties**

1. This Honourable Court be pleased to grant extension of time to appeal against Ruling and order of the District Court of Kinondoni in Civil Case No. 154 of 2018 given by Hon. Jacob RM 15<sup>th</sup> December, 2020.
2. Any other Relief/ Reliefs which Honourable Tribunal may deem fit to Grant.
3. Costs of this Application.

The application was disposed by way of written submissions. It is pertinent to note that the last time the 2<sup>nd</sup> respondent entered appearance through his advocate was on the 22<sup>nd</sup> June, 2022 and the 1<sup>st</sup> respondent never entered any appearance despite the records of the court showing that on the 27<sup>th</sup> day of October, 2021 the applicant informed the court that the respondents were duly served. They have however complied with the court order to file written submissions accordingly.

Before this court, the applicant was represented by Mr. Rugambwa Pasha, learned advocate, while on their part, the 1<sup>st</sup> respondent was represented by Mr. Devis Vedastus, learned Advocate and the 2<sup>nd</sup> respondent was represented by Mr. Omary Mdemu, learned advocate. The application

was disposed by way of written submissions which were accordingly filed. Much appreciation to the submissions of the learned Counsels which will be considered in due course of determination of this application.

Having analysed the records of this application, initially it is important to emphasize that an application for extension of time, the applicant must adduce sufficient reasons for the delay accounting for each day of delay. In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (Unreported) at page 6 it was held:

*"On the authority however, the following guidelines may be formulated: -*

- a) The Applicant must account for all the period of delay*
- b) The delay should not be inordinate*
- c) The applicant should show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take."*

Extension of time may also be granted even if good cause for the delay is shown, where the point that call for the attention of court extension of time which is sought for, is a point of illegality of the impugned decision. On our part, the court's power to extend time is discretionally and must be so exercised judiciously upon being satisfied that the reasons for the delay are sufficient and convincing.

Extension shall be granted upon the court being satisfied of a manifested illegality on the impugned decision that extension is sought for

(see the case of **Principle Secretary Ministry of Defence and National Service Vs D.P. Valambhia [1992] TLR 185** where the position was held). On the above principles, the issue before me is whether the applicant has succeeded to establish any of the elements which may warrant extension of time.

On my part, having been privileged with the records of the trial court, I find the averments in para 8 and 9 of the affidavit of Mr. Lema in support of the application, warrant my attention. I shall therefore determine the issue of illegality first before going into the reasons for the delay if need be. In his affidavit and the submissions to support the application, Mr. Lema averred that on 15<sup>th</sup> December 2020, when the matter was called for hearing of defence, the Counsel for the 1<sup>st</sup> respondent holding brief for the 2<sup>nd</sup> Respondent prayed to the court to close the defence case as he had no witness. The court closed the case for defence side. He argued that without any application or prompting, the trial court proceeded to dismiss the suit *sou moto*, apparently, for non- appearance of the Plaintiff.

His argument was that instead of the court pronouncing judgment on merits, since the applicant had already proved his case and the 1<sup>st</sup> respondent had closed his case while the 2<sup>nd</sup> respondent was a party to the case through a thirty-party notice joined by the 1<sup>st</sup> respondent, it dismissed the matter contrary to Order XX Rule 1 of the CPC. He urged the court to allow the application on that ground citing the case of **Mohamed Salum Nahdi Vs Elizabeth Jeremiah, Civil Reference No. 14 of 2017** (unreported) where it was held that once an issue of illegality in the decision sought to be challenged is raised, it amounts to a good cause and that

even if a good cause for the delay is not accounted for, the court may extend time.

On his part, Mr. Vedastus argued that for a decision to be attacked of illegality, the applicant has to successfully argue that the court acted illegally for want of jurisdiction, denial of the right to be heard or that the matter was time barred. He was of the strong view that the same was not the case during trial. On his part, Mr. Mdemu did not make any reply submission on the issue of illegality.

Having been privileged with the proceeding of the trial court in the supplementary affidavit of the applicant, it is apparent, as submitted by the applicant, that on the 15<sup>th</sup> December, 2020 when the matter came for hearing of defence case, the 1<sup>st</sup> respondent/ 1<sup>st</sup> defendant closed his case and prayed for, on behalf of the 2<sup>nd</sup> defendant, the court to close the defence case as the had no witness and the court closed the case for defence. However the trial court proceeded to dismiss the case for want of prosecution for non- appearance of the Plaintiff. In my strong view, this issue call for the attention of the appellate court so that that its propriety can be scrutinized.

That being the case, I need not dwell much on the grounds for the delay as this reason alone is sufficient to warrant the discretion of this court to extend time. Consequently, this application is hereby granted.

Time extended for the applicant to lodge his appeal against the decision of the District Court of Kinondoni in Civil Case No. 154 of 2018. The

intended appeal shall be lodged in this court within twenty-one (21) day of the date of this ruling. Costs shall follow cause in the intended appeal.

Dated at Dar es Salaam this 02<sup>nd</sup> day of May, 2023



A handwritten signature in black ink, appearing to read "S. M. Maghimbi", is written over a horizontal dotted line.

**S. M. MAGHIMBI.**

**JUDGE**