

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM SUB-REGISTRY**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 4012 OF 2024**

**MF ELECTRICAL ENGINEERING LTD .....APPLICANT**

**VERSUS**

**GEO ACCURACY ENGINEERING**

**CONSULTANCY LTD..... RESPONDENT**

**RULING**

**MKWIZU J:-**

This application was brought under Order VIII Rule (3) of the Civil Procedure Code (Cap 33 RE 2019) by the applicant seeking an extension of the time within which to file a written statement of defence. An affidavit supports it.

The facts deposed in the affidavit are that the applicant engaged a lawyer on 8/2/2024, after she was served with the plaint on 29-1-2024. On 9/2/2024, the applicant's counsel made his first appearance in court, promising to file the WSD within time as they were still within the 21 days stipulated by the law. This advocate could not however act punctually, he was on 11-2-2024 bereaved by his uncle who raised him, resident of Urambo Tabora and for that reason he on 13/2/2024 travelled to Urambo and later to Kigoma for burial and other family matters related to that. He according the records came back on 18/2/2024, when the time to file a defence was almost over. In good faith, he filed this application within the seven days provided for by the law on 22/2/2024.

The application was strongly opposed by Mr. Mosha counsel for the respondent for failure by the applicant to account for each day of the delay. The advanced argument was that while the plaint was served to the defendant on 29-1-2024, the counsel was duly instructed on 8-2- 2024 without explanation as to why there was a delay in instructing the counsel; that the affidavit lacks explanation on why the defence was not filed between 8-2-2024 to 11-2-2024, and why it took the applicant's counsel four days period from 18/2/2024 when he returned from burial to file this application on 22/2/2024.

Mr Mosha went further to attack the affidavit for being marred by untruth statements. He said, it is not true that service of the plaint and summon was effected on the applicant's secretary on 29-01-2024 as asserted in the affidavit, instead it was served on them on 30<sup>th</sup> January 2023 . Relying on **Wambura N J Waryuba V, The principal secretary of the Ministry of Finance and Other**, Civil Application No 320 /02/2020, he contended that the car rental receipt attached to the applicant's affidavit shows payment made for someone else and not for the applicants counsel He lastly prayed for the dismissal of the application with costs.

Rejoining Mr. Matata said he need not account for the period from the date of service of the plaint to his client to 11/2/2024 because they were still within time and that he was only required to account for the period after the lapse of the 21 days, which is only a single day 21-2-2024 because the application was filed on 22/2/2024

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While conceding that proof of death was necessary, Mr. Matata said each case is to be decided on its merit. He clarified that the deceased was his uncle, who raised him, and he only attended the burial ceremony. He thought that asking for the burial permit would have to go extreme, so he attached only a car hire receipt

with the deceased's name.

I have considered the application. Admittedly, the applicants' prayer is governed by Order VIII Rule 1 (3) of the Civil Procedure Code, which states:

*"(3) The court may, on application by the defendant before the expiry of the period provided for filing a written statement of defence or within seven (7) days after expiry of that period and upon the defendant showing good cause for failure to file such written statement of defence, extend time within which the defence has to be filed for another ten days and the ruling to that effect shall be delivered within 21 days."*

As affirmed by the respondents' counsel, the plaint and summons were served on the plaintiff, now the applicant, on the 30th day of January 2024. Thus, counting from that date, the 21 days would run to 21st February 2024, and the present application was filed on 22nd February 2024, just a day after the lapse of the 21 days.

The bereavement of the applicant's counsel has been raised as the sole reason for the delay in filing the written statement of defence. Mr Shayo has argued that the ground is not supported by evidence that the receipt furnished contains payment made on behalf of the persons named in the

receipt by the applicant's counsel. It doesn't show if it was for the payment of the applicant's counsel journey to Tabora. I think this is a perception. According to the attached receipt, the payment was by the applicant's counsel for the hire of a vehicle to Tabora. There is no reason why I should not trust this information.

The grand norm of justice in our jurisdiction is that the substance of disputes should be heard and decided on merits over its form. Given the degree of the

delay that is a one-day delay, and the explanation given, I don't see anything influencing deviation from the said norm.

That said, I find merit in the application, and consequently, I grant it. The time to file the Written Statement of Defence is hereby extended for ten (10) days from this decision. No order as to costs.

**Dated at Dar es Salaam, this 19th day of April 2024**



**E.Y. MKWIZU**

**JUDGE**

**19/4/2024**