

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 327 OF 2023

(Arising from the Ruling and Order of the High Court of Tanzania (Dar es Salaam Sub-Registry) at Dar es Salaam (Hon. Pomo, J) dated 19th April, 2023 in Civil Case No. 167 of 2022)

**TANZANIA DEVELOPMENT FINANCE CO. LIMITED
(TDFL).....APPLICANT**

VERSUS

**NISHA DILIPKUMAR KESARIA (The Administratrix of the Estate of the Late
Dilipu Kumar Kesaria, Deceased) RESPONDENT**

RULING

Date of last order: 17/11/2023

Date of Ruling: 16/02/2024

A.A. MBAGWA, J.

This is an application for extension of time within which to file an application to set aside the dismissal order of this Court (Hon. M.K. Pomo J.) dated 19th April, 2023 in Civil Case No. 167 of 2022. The applicant has brought this application by way of chamber summons made under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E. 2019] and Order VIII Rule 17(3) of the Civil Procedure Code [Cap. 33 R.E. 2019].

In addition, the application is supported by an affidavit sworn by Mr. Peter Kibatala, advocate for the applicant. On the other hand, the respondent

did not file a counter affidavit to oppose the application nor did he present the reply written submissions.

The facts obtaining in this matter as gleaned from the depositions may briefly be stated as follows: the applicant instituted a Civil Case No. 167 of 2022 before this Court against the respondent. Initially, the matter was before Hon. Ismail J (as he then was) but after his transfer to another duty station, the case was re-assigned to Hon. Pomo J. It is on record in particular, the typed proceedings dated 1st day of December, 2022 that both parties appeared before Hon. Pomo J. on 01/12/2022 and informed the Court that the pleadings were complete. Thus, they prayed for a date for the first pre-trial conference. Consequently, the Court, in the presence of both parties, adjourned the matter and scheduled it for the first pre-trial conference on 19th April, 2023. It is further evident that on 19th April, 2023 neither party appeared as such, the trial Court, in terms of Order VIIIB Rule 17(3) of the Civil Procedure Code, dismissed the suit.

The applicant states that his counsel Peter Kibatala went to Court on 03rd May, 2023 only to be told that the suit was called on 19th April, 2023, and dismissed for non-appearance. It is further averred that on being informed of the dismissal order, the applicant's counsel verified the status of the case *vide* Judicial online case status records/system and learned that there were two dates namely, 19th April, 2023 and 3rd May, 2023. A copy



of printouts from the Judicial Statistics Dashboard System (JSDS) was attached to the affidavit and marked TAL-1.

More so, it is deposed that the counsel for the applicant reported the status of the case to the principal officer of the applicant, one Ms. Suzan Kavishe but the latter told him to wait for the board meeting of the applicant's shareholders. The applicant attached the email printouts (annexure TAL 2) to back up his contention. It was contended that, as the applicant's counsel could not proceed with the matter without the applicant's approval, he had to wait until 22nd June 2023, when the counsel was given a go-ahead by the applicant's principal officer, one Ms. Suzan Kavishe to proceed with the suit. As such, on 04th July, 2023, the applicant, filed the present application. Based on the grounds advanced in the affidavit and submissions, the applicant implores this Court to grant the application.

On 12th September, 2023, when the application was called on for hearing, Mr. Alphonse Nachipyangu, learned advocate appeared for the applicant whilst Mr. Laurent Leonard, learned advocate appeared for the respondent. This court ordered the application to be disposed of by way of written submissions. The applicant filed his written submission as per the scheduled orders but the respondent did not comply to the court order and no reason was fronted for its failure.



In the applicant's submission, the learned counsel adopted the contents of his affidavit and expounded on them. In buttressing his submissions, counsel for the applicant cited the cases of **Clement George Mwakibinga vs CRDB Branch Manager – Kahama and Another**, Civil Appeal No. 17 of 2019, High Court of Tanzania (Shinyanga) and **Tabitha Maro vs Raddy Fibre Solution Limited**, Misc. Civil Application No. 111 of 2022, High Court of Tanzania (Dar es Salaam). In his view, the applicant had good grounds to justify the extension of time. Thus, the applicant prayed to the Court to allow the application.

It is noteworthy that in an application for extension of time, the pertinent issue for determination is whether the applicant has demonstrated sufficient cause to warrant extension of time.

The law is settled that grant of extension of time is the exclusive discretion of the Court and the same must be exercised judiciously. See the case of **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam. I should also point out that, for the court to exercise its discretion properly, the applicant must adduce sufficient grounds for the delay.

It is a settled law that there is no fast and hard rule as to what constitutes good cause for delay instead, good cause is determined upon consideration of all the obtaining circumstances in a particular case. See



Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd,

Civil Application No. 96 of 2007, CAT at Dar Es Salaam and **Laurent**

Simon Assenga vs Joseph Magoso and Two Others, Civil Application

No. 20 of 2016, CAT at Dar es Salaam,

Cognisant to the above position, through case laws, courts have prescribed various considerations which may be taken into account for establishing sufficient cause. The factors include illegalities in the impugned decisions, length of delay involved, reasons for the delay, the degree of prejudice, if any, that each party is likely to suffer, the diligence of a party, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bweshia & Another,** Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo,** Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation,** Civil Application No. 372 of 2018, CAT at Dar Es Salaam (unreported).

In the application at hand, the reason for the delay as it can be depicted under paragraphs 5, 10, and 11 of the affidavit is belated approval from the applicant's board of directors.



According to paragraph 7 of the affidavit, the suit was dismissed on 19th April, 2023 but this fact became known to Mr. Kibatala on 3rd May 2023 when he came to court believing that it was the date for the first pre-trial conference only to be told that the suit to wit, Civil Case No. 167 of 2022 was called on and dismissed on 19th day of April, 2023. It is worthwhile to note that at that time, the applicant was still remained with fourteen (14) days out of thirty (30) days prescribed to bring an application for setting aside a dismissal order. However, that was not done on the purported ground that the applicant's counsel was waiting for the applicant's approval. Nonetheless, the applicant could not attach the alleged board resolution authorising him to bring this application. To crown it all, it is on record that when the suit was adjourned and fixed for the first pre-trial conference on 19th April, 2023 both parties were present. According to the proceedings on 01/12/2022, Mr. Omary Msemo, learned advocate appeared for the applicant/plaintiff whereas Ms. Rashida Jamaldin, learned advocate appeared for the respondent/defendant. In the circumstances, the contention that there was confusion on the dates lacks merits.

Thus, upon consideration of the applicant's affidavit as a whole, it goes without saying that the applicant was negligent in pursuing his case and for that reason, he had no good cause for extension of time.



In the upshot, I am inclined to hold that the applicant has failed to demonstrate sufficient grounds for this Court to grant the extension. That said and done, I hereby dismiss the application and since the same was not contested, I make no orders as to costs.

It is so ordered

The right of appeal is explained.

Dated at Dar es Salaam this 16th day of February, 2024



A handwritten signature in blue ink, appearing to read "A.A. Mbagwa".

A.A. Mbagwa

JUDGE

16/02/2024