

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 80 OF 2023

PANGEA MINERALS LIMITED..... APPLICANT

VS

BISMARCK HOTEL MINING COMPANY LIMITED RESPONDENT

RULING

S. M. MAGHIMBI, J:

By way of chamber summons supported by an affidavit, the applicant lodged an application under section 14 (1) of the law of limitation Act [Cap. 89 R.E. 2019], (the Limitation Act), moving this Court to grant the order on extension of time. The extension sought is to enable the applicant to apply for review against the decision of this Honourable Court ("Hon Kisanya, J") dated 19 January 2023. The applicant has also prayed for costs of this application and any other relief this Court may deem just and fit to grant.

A narrative on the background of this matter is that there is pending before this Court Civil Case No. 165 of 2019 whereby the respondent herein is the plaintiff and the applicant is the defendant. At some point in time, the defendant raised 3 preliminary points of objections which were overruled on 17th January 2023. The applicant herein seems to have been

aggrieved by the Ruling of this court above, he requested for the copy of the ruling by writing a letter dated 23rd January 2023 which was lodged in Court on the 25th January, 2023. Follow-ups were made on the 27th and 31st of January 2023 with no success of being furnished with a copy of the said ruling.

The Suit was scheduled for mention on the 3rd of February 2023 on that day Counsel for the respondent prayed for an adjournment so that parties be availed with the copy of the ruling. The matter was adjourned to 7th February 2023 while parties were ordered to collect the ruling on 6th February, 2023. Applicant's Counsel claims to have made follow-ups on the 6th of February 2023 and was informed that the Judge was not around to verify the accuracy of the ruling and Bahati the Court clerk informed them that the ruling would be ready on 7th February 2023. And the ruling was eventually ready on 7th and furnished to the parties:

Their reason for the delay was mainly that having gone through the ruling, the applicant's Counsel was desirous of applying for review but 30 days within which to file an application for review had lapsed and it was not their fault but delay in being furnished with the copy of ruling. That the last date was 18th February 2023 and that is what necessitated the current application.

The application was heard by way of written submission. The applicant was represented by Ms. Flora Mukasa while the respondent o

enjoyed the services of Mr. Kapinga learned Advocate. In support of the application, Ms. Mukasa submitted that the test for determining an application for extension of time was stated in the case of **Finca Microfinance Bank v Noel Sangu & Another, Miscellaneous Labour Application No. 20 of 2019**, High Court of Tanzania (Labour Division), at Mbeya where the Court held that:

"The test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted".

She further cited the case of **Ilmu Shija v Shingisha Madukwa**, Civil Appeal No. 310 of 2017, Court of Appeal of Tanzania, at Tabora (unreported), which provided for the factors for determining good cause for one to be granted an extension of time. She referred to page 7 of the decision whereby the court pondered that: -

- "(a) The applicant must account for all days of the delay,*
- (b) The delay should not be inordinate,*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) if the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

With regards to the provision of section 19 of the Limitation Act her submission was that the Section provides an exclusion of certain time periods in calculating the period of limitation, she cited the provisions thus:

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."

She went on submitting that it was established in her affidavit that the applicant has fulfilled all the factors in establishing good cause. She pointed to paragraphs 6 and 7 of her affidavit and argued that once a copy of the ruling was delivered to them on 19th January, the Applicants lodged a letter applying for a copy of the ruling on 25 January 2023 and made various follows ups thereafter. The Applicants claim to have been diligent in pursuing the copy of the ruling and accounted for every day of the delay in respect of the filing of this Application.

Ms. Mukasa went on submitting that they were not at fault for the time it took in obtaining a copy of the ruling, that was an administrative matter relating to the Court's registry and not the conduct of the Applicants. Therefore, in that circumstance, she argued, there was no

delay in pursuing this application, therefore, it cannot be said to be inordinate. In the premises, and by reason of the above submissions, the applicant's Counsel prayed that this Honourable Court grant extension of time to apply for review against the decision of this Honourable Court.

In reply, Mr. Kapinga submitted that the Applicant did not account for all the period of delay since the ruling of the Court was delivered on the 19th January, 2023. That they find the time from when the ruling was delivered to the time when this extension was filed falls within the purviews of being inordinate. He submitted further that the respondent's assertion that there was a dilatory conduct on the part of the Applicant as the applicant was not kin enough to have acted on the intention to challenge the ruling they claim to find not in their favour. He argued that if the court feels that there are other sufficient reasons, such as the existence of a point of law or sufficient importance; such as the illegality of the decision sought to be challenged then a grant will be proper since it is the position of law of which cant be traced from the records.

The Respondent then argued that the delay in filing the intended review constitutes an inordinate delay and the same exhibited dilatory conduct by filing the application late. The Respondent also finds that the intended application for review is not viable and lacks competence. In concluding is submission, the Respondent claim they would be highly prejudiced if the application is allowed.

Having gone through the application and submissions for and against the application, I find no harm in refreshing our minds on the aspect of extension of time. It is the jurisprudence in our jurisdiction that the discretion of granting an extension of time lies within the powers of the Court and that the same has to be judiciously exercised. For one to be granted the applied extension of time he/she has the duty to satisfy the Court on established principles in respect to extension of time sufficient to convince the court to exercise its discretionary powers.

An extension of time has been reiterated by the Court in a series of cases that have laid down, the principles to be abided with for the Court to grant the an extension of time. In the case of **Paradise Holiday Resort Limited Vs Theodore N. Lyimo, Civil Application No.435/01 of 2018** it was stated that:

"...but the Court consistently considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the Respondent stands to suffer if time is extended, whether the Applicant was diligent, whether there is point of law sufficient importance such as the illegality of the decision sought to be challenged".

There is also the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** where it

was stated that for an extension of time to be granted the following ought to be done:

- (a) The applicant must account for all the period of delay,
- (b) The delay should not be inordinate,
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

As for the application before this Court, I find that the ruling from which an extension of time is sought was delivered on the 19th January, 2023 while the application for extension of time was filed on 02 day of March 2023. The Law of Limitation under Part III item 3 states that: -

"For an application under the Civil Procedure Code for a review of a decree, judgment, or order is 30 days".

From the records of the Court it is clear that 30 days has lapsed from the time the ruling was delivered to the time the application was filed. However, in accounting for the days of delay the applicant by claimed that they approached Bahati Omary a Court Clerk who informed them that ruling would be ready on 7th February 2023. It is trite law that once an affidavit mentions another person that person is required to

swear an affidavit failure to so becomes hearsay. In the case of **NBC Ltd Vs. Super doll Trailer Manufacturing Company Ltd**, Civil Application No. 13 of 2002 (CAT unreported) explained on the need of swearing affidavit of the mentioned person in the affidavit. The court had this to say:

"...an affidavit which mentions another person is hearsay unless that other person swears as well."

Having perused the records, I have not managed to trace the affidavit of the mentioned clerk hence I find the averment to be hearsay. That being the case, the records remain that the applicants have not adduced sufficient reasons for the delay. Consequently, this application is hereby dismissed.

Dated at Dar es Salaam this 9th Day of May, 2024.



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

S. M. MAGHIMBI

JUDGE