

**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. 2719 OF 2024**

*(Originating from Civil Case No. 122 of 2006 and Execution No. 22 of 2022)*

**ALLIANCE INSURANCE CORPORATION LIMITED.....APPLICANT**

**VERSUS**

**TUSANGE KALALA MBWAMBO..... RESPONDENT**

**RULING**

*Date of last hearing: 05/03/2024*

*Date of ruling: 15/03/2024*

**A.A. MBAGWA, J.**

This is an application for extension of time within which to apply for a stay of execution. The application has been brought by way of chamber summons made under sections 14(1) of the Law of Limitation Act and section 95 of the Civil Procedure Code. In addition, it is supported by an affidavit affirmed by Janki Pundrick Sinha, the applicant's principal officer.

On the adversary side, the application was resisted through a counter affidavit sworn and filed by Rudolf Temba. Temba contends that he had been given power of attorney to prosecute the matter on behalf of the respondent.

In brief, the material facts of the matter, as gleaned from the parties' depositions, may be told as follows;



The respondent successfully sued the applicant in the District Court of Ilala via Civil Case No. 122 of 2006 whose judgment was delivered on 20/12/2012. Aggrieved by the verdict of the trial court, the applicant appealed to this Court via Civil Appeal No. 13 of 2013. The appeal was argued by way of written submissions and the judgment was to be delivered on notice. However, for some obscure reasons, the judgment has not been delivered to date.

Following the inordinate delay in delivering the judgment, the respondent decided to execute his decree in the trial court hence he filed Execution No. 22 of 2022.

On 25<sup>th</sup> October, 2022, the applicant was served with a notice to show cause as to why the execution should not be granted. Along with the summons to show cause, the court issued a garnishee nisi against the applicant's bank account. The applicant was supposed to lodge an application for stay of execution within sixty (60) days from the date of service but failed to meet the deadline. It is against this backdrop, that the applicant has brought the instant application seeking an extension of time within which to apply for a stay of execution.

The applicant states that the delay was not deliberate because from 29/11/2022 to 14/07/2023 she was pursuing Execution No. 22 of 2022. Conversely, the respondent strongly opposed the applicant's averments saying that the applicant has failed to demonstrate good reasons for the delay.



When the application was called on for hearing, Mr. Allen Nanyaro, learned advocate represented the applicant whereas Mr. Gabriel Munishi, learned advocate appeared for the respondent. The application was argued by way of written submissions.

The applicant reiterated the contents of the affidavit and implored the Court to grant the application. The learned counsel argued that the applicant has demonstrated good cause for this Court to grant the application. While referring to the case **Brazafric Enterprises Ltd vs Kaderes Peasants Development(PLC), Civil Application 421 of 2021**, the applicant's counsel had it that there is no universal definition of sufficient ground for extending time rather, the court takes into account various factors such as length of delay, the diligence of the applicant or illegality in the decision sought to be impugned. The learned counsel highlighted that the decision in Civil Case No. 122 of 2006 is tainted with illegalities including the anomaly that the power of attorney which purportedly enjoined Mr. Rudolf Temba to prosecute the case was not filed in court. The applicant's counsel finally opined that the applicant has shown good reasons for the delay as such, the application is meritorious.

In rebuttal, the respondent's counsel strongly opposed the application. At the outset, he submitted that the applicant had improperly moved the court by citing section 95 of the Civil Procedure Code. He expounded that section 95 of the Civil Procedure Code is only applicable where there is no specific provision for the reliefs prayed. In support of his position, the learned counsel referred this Court to the case of **Bunda District Council vs Virian**



**Tanzania Ltd [ T.L.R 2000] 385.** He thus invited the court to strike out the application with costs.

Without further ado, I find it pertinent to deliberate on this point before I venture to the merits of the application. It is common ground from the chamber summons that the applicant moved this court under section 14(1) of the Law of Limitation Act and section 95 of the Civil Procedure Code. I agree with the respondent's counsel that section 95 is invoked where there is no clear provision for a specific action. However, I part company with him on the proposed consequential orders. It is the settled position that where a party cites relevant and irrelevant provisions, the court is said to have been properly moved. The court is supposed to consider the relevant and ignore the irrelevant provisions. See the case of **Duda Dungali vs the Republic**, Criminal Application No. 5 of 2014, CAT at Mbeya.

Since section 14(1) of the Law of Limitation Act was cited, this court was properly moved hence the respondent's counsel's argument is unfounded.

Reverting to the merits of the case, the learned counsel for the respondent had it that the applicant had not demonstrated sufficient reasons for this court to grant an extension. The learned counsel added that the applicant was negligent in pursuing his appeal to wit, Civil Appeal No. 13 of 2023, and did not account for each day of delay. He thus invited this Court to dismiss the application.

As rightly submitted by both parties, the crucial question for determination in this application is whether the applicant has exhibited sufficient causes for delay.





It is common cause that the grant of extension of time is exclusively the discretion of the Court. See also the case of **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam. In exercising this discretion, the court is guided by one factor namely, whether there are sufficient grounds. However, it is worthwhile to note that in law there is no fast and hard rule as to what constitutes a good cause rather, a sufficient 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. In **Assenga's case** (supra), the Court of Appeal on page 3, had the following to say;

"In determining an application under Rule 10, the issue that has to be resolved is always, whether, the applicant has shown good cause for extension of time. What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case."

Coming to the instant application, it is common cause that the applicant was served with documents in Execution No. 22 of 2022 on 25<sup>th</sup> October 2022. As such, according to the settled position, the applicant ought to bring the application for stay within sixty (60) days from the date she was served with the application i.e., the 25<sup>th</sup> day of October 2022. See **George Katabi**



**Mtasha And Fidel Alphonse Ntanyinya vs Mashauri Wilson Ntizu,**  
Civil Appeal No. 2 of 2022, HC at Mbeya. However, the applicant did not apply for a stay of execution within the prescribed time.

I have keenly considered the circumstances under which this application has been brought. There is no gainsaying that Civil Appeal No. 13 of 2013 was timely filed but it has been pending in this court for reasons beyond the applicant's control. It is also clear that there have been several applications which the applicant has been pursuing concerning this matter.

Thus, having taken into account all the obtaining circumstances and considering that there is an appeal against the judgment and decree that is about to be executed, I am opined that, in the interest of justice, it is apt to grant the application. I consequently allow it. The applicant is therefore given fourteen (14) days from the date of this ruling to file the intended application for a stay of execution. Each party should bear its costs.

It is so ordered.



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

**A.A. Mbagwa**

**JUDGE**

**15/03/2024**