

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 88 OF 2013

ADAM RASHID CHOHOA PLAINTIFF
VERSUS
KNIGHT SUPPORT (T) LTD DEFENDANT

21st April 14th May &, 2015

RULING

MWAMBEGELE, J.:

This is a ruling in respect of a preliminary objection raised by Mr. Sinare, learned counsel for the defendant Knight Support (T) Ltd to the effect that the lifespan of the suit filed by Adam Rashid Chohora; the plaintiff, had long expired and hence it should be struck out. The notice filed by the learned counsel for the defendant is to the following effect:

"TAKE NOTICE that in the next appearance before the court or any date as the suit shall stand adjourned, the Counsel for the

Defendant shall move the Honourable Court, to struck (sic) out the suit with costs in that in terms of **Rule 31 (1) and (2)** of the High Court (Commercial Division) Procedure Rules, 2012, the lifespan of the suit had since 25th May, 2014 expired such that the jurisdiction of the Hounourable Court to entertain the matter has ceased for there is nothing pending in this court."

The preliminary objection was argued before me on 21.04.2015 during which Mr. Nkangaa, learned advocate, appeared for the plaintiff and Mr. Sinare, learned advocate, appeared for the defendant. At the hearing of the Preliminary Objection (PO), Mr. Sinare, learned counsel for the defendant made a long and well-reached submission in support of the PO, but for reasons that will be clear shortly, I will not recapitulate on it.

In response, Mr. Nkangaa, learned counsel for the plaintiff, unveiled that the learned counsel for the defendant did not read the record of the court properly in that, at the request of the plaintiff's counsel, the lifespan of the matter was extended on 22.09.2014 to ten more months. In view of that, the learned counsel submitted that the PO raised by the defendant's counsel has no legs on which to stand and prayed that the same be dismissed with costs.

In a short rejoinder, Mr. Sinare seemed to concede to Mr. Nkangaa's response but requested the court to revisit its proceedings of 22.09.2014 to satisfy itself whether the lifespan of the case was extended as alleged by the counsel for the plaintiff. Mr. Sinare added that should the court find that the allegation of the learned counsel for the plaintiff has some truth, he would withdraw the PO. However, should the court find the opposite, he would maintain the same.

I reserved the ruling to today which I now give.

This matter will not detain me. As rightly pointed out by Mr. Nkangaa, learned counsel for the plaintiff, the PO raised by Mr. Sinare, learned counsel for the defendant has no merit at all; it is misconceived. As correctly stated by the learned counsel for the plaintiff, on 22.09.2014, this court extended the lifespan of the case to ten more months with effect from that date. The court made the order after Mr. Nkangaa, who appeared for the plaintiff, had made a prayer for extension of the lifespan of the case which lifespan had expired since 26.07.2013. Neither the defendant's principal officer nor its advocate was in attendance on that date. That is perhaps the reason why Mr. Sinare, learned counsel for the defendant, was not aware of such extension hence the PO.

However, the fact that both the defendant's principal officer and its advocate were not present when the extension order was made is no

excuse. Litigants have got to be vigilant in following up the progress of their cases in court. Having not attended on 22.09.2014 when the extension order was made, the defendant or its advocate ought to have made a follow-up to see what had transpired in their absence. And to clinch it all, it is my considered view, that the defendant's counsel ought to have elegantly perused the court record before embarking on the assignment of raising the PO. That was not done and he has no one to blame.

Unfortunately, having so found; that the court record shows that the lifespan of the case was extended on 22.09.2014, and hence the application misconceived, Mr. Sinare, learned counsel for the defendant has no room to withdraw the PO, for the same had been argued and a ruling thereof reserved for pronouncement. Instead, the inaction and/or dilatory conduct are to be punished by costs. The PO raised by the learned counsel for the defendant is without merit and, consequently, is overruled with costs.

It is so ordered.



DATED at DAR ES SALAAM this 14th day of May, 2015.

J. C. M. MWAMBEGELE

JUDGE