

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 151 OF 2015
(ARISING FROM COMM CASE NO 135 of 2014)

TANZANIA MICROFINANCE LIMITED.....APPLICANT

VERSUS

INSTITUTE FOR
INFORMATIONTECHNOLOGY.....RESPONDENT

RULING

Mansoor, J:

Date of Ruling- 20TH NOVEMBER 2015

The plaintiff's suit was dismissed on 10th April 2015 for want of prosecution under Rule 31 (1) (a) of the High Court (Commercial Division) Procedure Rules, 2012, which provides as follows:

31.--(1) Where at the time appointed for the pre-trial conference, one or more of the parties fails to attend, the Court may:

(a) dismiss the suit or proceedings;

Aggrieved by the dismissal order, the Applicant filed an application for extension of time for filing an application to set aside the dismissal order. The Applicant filed the application under section 14 of the Law of Limitation Act, Cap 89 R: E 2002.

The reasons advanced by the Applicant are that the case was assigned to Hon Judge Nyangarika, and they were informed by the Registrar that Hon Judge Nyangarika was transferred and the file has been assigned to another Judge. They were also informed that the file went missing, and they will be notified of the date and the name of the new Judge. They contend that they have never received any notice. That the Applicant wrote letters to the Registry one dated 14th May 2015 and another on

19th May 2015. They perused the file and found out that the matter was already dismissed for want of prosecution. That the Applicant became aware of the dismissal order after the time to file for an application was already passed/lapsed.

The Respondent filed a lengthy submissions citing a number of cases opposing the application. In a nutshell, the Respondent is arguing that there was no sufficient reason advanced by the Applicant warranting this Court to grant an extension of time. The Counsel for the Respondent cited the case of **Selina Chibago vs Finihas Chibago, Civil Application No. 182 A of 2007**, Court of Appeal (unreported), held that the reasons of illegality of the decision challenged is sufficient ground for granting an extension of time so that the alleged illegality could be established, and to take appropriate measures to put the matter and the record right. The Counsel argued that in the present case there is no illegality alleged. The Counsel argues that the plaintiff had been negligent in making follow up of its case, as three months had passed since Hon Nyangarika was transferred, and the matter was

mentioned before Mansoor J for three times i.e. on 27/2/2015, again on 17th March 2015, and before it was dismissed for want of prosecution on 10th April 2015. I noted all the cases cited by the Respondent in opposing this matter, but I would say the following:

Going by the records, the Respondent was ordered by the Court to serve the Applicant, there was no proof that the Applicant was notified either by the Plaintiff or by the court. I see no blunder on the part of the Counsel for the Applicant as it is abundantly clear that the Counsel had taken diligent steps in making the follow up on the matter. The Counsel had written two letters to the court checking on the status of the case. Again, on the records, no notice was served upon the Applicant or its Counsel, after Hon Nyangarika was transferred to another station. I agree with the holding in the case of **Institute of Finance Management vs Simon Manyaki** CAT, Civil Application No. 13 of 1987 (unreported) in the sense that each case should be decided on its merits and a decision of a case should depend on the circumstances of the

individual case. In this case I see no mistake by the Counsel for the plaintiff/Applicant, and the Counsel has advanced sufficient grounds warranting this Court to grant an extension of time to the Applicant to file an application to set aside the dismissal order of 10th April 2015 in Commercial Case No. 135 of 2014.

The prayer contained in the chamber summons is granted.
Costs to follow the cause.

DATED at DAR ES SALAAM this 20TH day of NOVEMBER, 2015

**MANSOOR
JUDGE
20TH NOVEMBER 2015**