

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

**MISCELLANEOUS COMMERCIAL CAUSE NO. 149 OF 2015**

**CERAGEM TANZANIA LIMITED ..... APPLICANT**

**VERSUS**

**DR. LAZARO WAMBURA**

**DEOGRATIUS KUMALIJA**

**NASSARORYA COMPANY LIMITED**

**..... RESPONDENTS**

12<sup>th</sup> October & 10<sup>th</sup> November, 2015

**RULING**

**MWAMBEGELE, J.:**

The applicant was seeking to have the lifespan of Commercial Case No. 44 of 2014 extended through an application filed under Rule 4 of the High Court (Commercial Division) Procedure Rules, 2012 – GN No. 250 of 2012 (henceforth “the Rules”) and Section 95 of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002 (henceforth “the CPC”). On 14.07.2015, the respondent, through the services of Mr. Brashi, learned counsel, filed a preliminary objection against the application on the ground that the application had been brought under wrong provisions of the law. The learned counsel submitted that the proper provisions would have been rule 32 (3) of

the Rules. However, in the course of arguing the said preliminary objection on 08.09.2015, the learned counsel conceded that rule 32 (3) of the Rules is applicable in situations where an application for extension of the lifespan of the case is made thirty days before expiry of the lifespan and thereby withdrew the objection.

On 10.09.2015 the learned counsel for the respondents re-filed the notice of preliminary objection on the same ground that the application had been brought under wrong provisions of the law. The preliminary objection was heard before me on 12.10.2015 during which the applicant was represented by Mr Kibatala, learned counsel and the respondents had the services of Mr. Brashi, learned counsel.

Expounding, Mr. Brashi, learned counsel for the respondent submitted that extension of time to enlarge a lifespan of a case cannot be made under rule 4 of the Rules. He contended that the proper provision should have been Rule 32 (3) of the Rules but the same does not apply in the case at hand because it is applicable only thirty days before expiry of the lifespan. He contended that the proper provisions would have been section 14 (1) of the Law of Limitation Act, Cap. 89 of the Revised Edition, 2002 (henceforth "the Law of Limitation Act"). He went on to submit that section 95 of the CPCP does not apply because it is available to the court to exercise its inherent powers where there is no specific provision of the law dealing with the subject matter. He finally invited me to strike out the application for want of citation of proper provisions of the law.

Mr. Kibatala, learned counsel for the applicant, assailed the objection stating that it lacks merit and stems from forgetfulness and misapprehension of what the applicant is seeking from the court. He stated that the applicant seeks extension of the lifespan of the case and not extension of time to file an application. It was his assertion that not every extension is pursued under section 14 of the law of Limitation. The learned counsel gave an example of extension of time to file a written statement of defence which is not pursued under section 14 of the Law of Limitation Act.

Mr. Kibatala went on to submit that the provisions of rule 32 (3) of the Rules refer to oral application and as such the problem with the Rules is that it does not provide as to what happens where an oral application has not been made thirty days before the expiry of the lifespan of a case. The fallback position, stated the learned counsel, is provided by rule 4 of the Rules read together with section 95 of the CPC. He then surmised that since the application of rule 4 of the Rules has not been shown nor any case cited by Mr. Brashi, then the preliminary objection should be overruled with costs.

Rejoining, Mr. Brashi reiterated his earlier prayers and added that they did not cite any case just as the counsel for the applicant did not because the Rules are new and therefore it was very difficult to get authorities.

I have heard the contending views of both learned counsel with keen interest and accorded them a deserving attention. The tussle revolves around the application of the Rules of this Court *vis a vis* the provisions of the CPC in relation to extension of a lifespan of a suit in the Commercial Court. I am certain that it will not task my mind.

At the outset, it should be underscored that speed tracks in the commercial court do not apply. Rather, there is what is called "lifespan" of a case which is only 10 months and not to exceed 12 months. This span is regardless of the nature of the case (whether complex or simple), distance of the litigants from the court and or residence of the litigants (whether local, foreign or far from the court's jurisdiction), or status of the litigants. The policy objective behind this approach is to attain efficiency and speed in the delivery of justice in the commercial court. In the commerce word, where business must run daily, and with the volatility of the currency and interest rates fluctuations with its associated side-effects on the investment and economy, the importance of timely delivery of commercial justice cannot be over-emphasized.

Accordingly, the objective of the court being to enhance enforcement of contracts and laying conducive environment for investment, the Rules are designed to attain the ceiling of twelve months time limit for litigation.

That is why, as rightly stated by Mr. Kibatala, learned counsel for the applicant, the Rules do not provide as to what happens when the oral application has not been made thirty days before expiration of the lifespan of the case. To be precise, the Rules do not provide for application for extension of the lifespan after expiry of the time within which the same should be done. My considered view is that, this "*lacuna*" was not by default but by design based on the purpose of the Rules and its objective. Thus it is expected that litigants in the Commercial Court are the ones primarily concerned with saving time in litigation. Accordingly, they are expected to

comply with the rules which guide their conduct in litigation in the interest of justice.

Therefore, in my view, it is not a *lacuna* by not providing for application for extension of lifespan after the expiry of the original age of the case. Rather, it is not envisaged that a party will be unable to make an application thirty days before expiration of the set lifespan. This is because it is presumed that the parties are actively participating in the court's dispute resolution processes which include setting schedules for actions and complying with the same without fail.

Turning to the issue at hand, with the above laid ground, it is evident that there is no specific provision under the Rules to either extend the lifespan or make an application for extension of the lifespan of a commercial case after expiry of thirty days within which the scheduled lifespan can be extended. It follows therefore that by all intents and purpose, an application for extension of a lifespan of the case or a prayer to that effect made after expiration of both the said thirty days and the lifespan of the suit itself, is simply time barred. This, in my view, is the correct position of the law as it stands now. Therefore, an application brought as such will be incompetent for being filed out of time.

The next question is whether rule 4 of the Rules and section 95 of the CPC, being the provisions of general application, can properly move this court to extend time after the expiry of the lifespan of the case. Mr. Kibatata and Mr. Brashi are incongruent on this. Whereas Mr. Kibatata is of the view that since the Rules do not cater for the situation at hand, the fallback position is

provided by rule 4 of the Rules and section 95 of the CPC, Mr. Brashi contends that section 95 applies to invoke inherent powers of the court only where there is no specific provision of the law and hence the proper provision is section 14 (1) of the law of Limitation Act.

I find it difficult to streamline my thinking with reasoning and conclusions of either of the learned counsel. I shall demonstrate reasons for such difficulty. First, rule 4 requires considering the requirement to do substantial justice when applying the Rules. Section 95 on the other hand is cited in order to invoke the inherent powers of this court to ensure that ends of justice are met, whereas section 14 (1) of the Law of Limitation Act allows extension of time to do certain acts.

By way of analogy, under the CPC, where a speed track expires, a party may move the court to depart from the scheduling order in terms of Order VIII A rule 4. Where the circumstance is opportune, the court may do so *suo motu*. Under the Rules, the action of departure from the lifespan set by the Rules must be prompted by the litigant. The time to do so, unlike under the CPC where it is not provided, is thirty days before the lifespan expires. This implies that whereas a party under the CPC is at liberty to make an application for departure from the scheduling order at any time, such liberty is limited under the Rules.

At this juncture, I hasten to observe that inasmuch as this court has inherent powers, and inasmuch as there is need to consider substantive justice, the provisions of section 95 of the CPC and rule 4 of the Rules cannot be applied as pass codes to crack the otherwise secure doors of justice and hack its

efficient system in the name of the very substantive justice. This is because; the limitation exerted by the Rules has a direct bearing on the discretionary powers of the court with regard to extension of the lifespan just as the provision of Order VIII rule 1 (2) has on the powers of the court to extend time within which to file a defence - see ***Tanzania Harbours Authority Vs Mohamed R. Mohamed*** [2003] TLR 76, at page 79. Thus, since rules 1 (2) of Order VIII of the CPC and 32 (3) of the Rules provide for time within which applications for extension must be made, the interpretation by the court of appeal of such a provision would seem undoubtedly to be that the court has no powers be it discretionary or statutory, to extend time beyond that which is prescribed by the law.

It is for the above I am inclined to hold that in the Commercial Court, substantive justice is considered done and served when all schedules and time-lines as provided by the Rules are complied with and met. After all, this court is duty bound to see that rules of the court are observed strictly, lest the reasoning and object behind their enactment be defeated - see the ***Harbours*** case (supra) at page 81. In that accord, the delay which would result from accommodating a complacent litigant would rather be an injustice to another party to the suit interested to have their matter finalized.

That being the stance, the application brought out of the prescribed time cannot be served by neither section 95 of the CPC nor rule 4 of the Rules. If brought under those provisions, it will not only be incompetent for the reason of time bar but also for being brought under wrong provisions. That is because, as I have intimated, the said provisions have nothing to do with extension of lifespan because doing so is provided under the Rules, and the

*modus operandi* as well as timeframe within which to do so is categorically provided for under rule 32 (3) of the Rules.

The question then comes, which law can accommodate such an application? Or what should a litigant who has run out of time for making that application for extension of the lifespan of a case do in the circumstances?

Without much ado the proper and regular course would be to have the time within which to make such application under the Rules extended first. That, in my considered view, is when section 14 (1) of the Law of Limitation Act, comes into play. That is, a person who wishes to have the lifespan of a case extended after expiry of the thirty days within which he was supposed to make an oral application, is supposed to make an application for first to have such time extended so that he may make an application for extension of the lifespan of the case.

This is a logically and legally tenable course to take because once the time, within which to take a certain action has expired, one must seek to have that time extended by the court so that that action can be regular and legal.

It is for the foregoing analysis that I find the present application for extension of the lifespan to be incompetent for the two major reasons that it is time barred and not supported by proper provisions of the law. However, my conclusion is apparently different from Mr. Brashi's argument that the proper provision is section 14 (1) of the Law of Limitation because, as properly put by Mr. Kibatala, learned counsel for the applicant, the application seeks for extension of lifespan of the case and not extension of an ordinary time for a



certain action. This is because, as already alluded to above, the lifespan of a case is set by the Rules and accordingly its extension is per the Rules. Time within which to do so, as intimated, is also limited by the Rules as shown, which once it expires, a party must seek to have it extended so that he can proceed legally to apply for extension of the life span of the case.

The above said and done, the preliminary objection is therefore meritorious and sustained. Consequently, the application is struck out with costs.

Order accordingly.

DATED at DAR ES SALAAM this 10<sup>th</sup> day of November, 2015.

**J. C. M. MWAMBEGELE**

**JUDGE**