IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL CAUSE NO. 252 OF 2015

(Arising from Commercial Case No. 23 of 2015)

DAIKIN TANZANIA LIMITED ..... APPLICANT

VERSUS

DAIKIN INDUSTRIES LIMITED

MIKOCHENI BUILDERS MERCHANT LTD (MBM) ..... RESPONDENTS

7th & 8th December, 2015

RULING

MWAMBEGELE, J.:

The applicant Daikin Tanzania Limited had filed this application seeking for injunctive orders pending hearing of the main suit; Commercial Case No. 115 of 2015. In a ruling delivered yesterday 07.12.2015, Commercial Case No. 115 of 2015 upon which this application was pegged, was struck out after a successful preliminary objection by the first respondent. Thus, when this application was called on for necessary orders yesterday immediately after the pronouncement of the ruling in the main suit, Mr. Nuhu Mkumbukwa, the learned counsel who held brief for Dr. Mwakaje, leaned counsel for the applicant, prayed to withdrawal the application. As the application had not

been argued, the learned counsel prayed that there should be no order as to costs.

Ms. Miriam Bachuba, learned counsel, who holding brief for Mr. Aliko Mwamanenge, learned counsel for the second respondent had no problem with the learned counsel for the applicant withdrawing his application. However, she prayed for costs. The learned counsel stated that there had been incurred costs in the preparation of the application, hence the prayer.

Mr. Mkumbukwa, learned counsel, rejoined that if at all there were any costs that have been incurred by the respondents in the preparation of this application then the same was negligible. He thus reiterated his prayer that there should be no order as to costs.

I am called upon to decide whether the application should be withdrawn with or without costs. This is what this short ruling must answer.

I have, on several occasions, had an opportunity of discussing this point in some of my previous rulings. The recent ones are ***Mohamed Enterprises Vs the National Food Reserve Agency & Anor***, Commercial Case No. 182 of 2013, ***Mazenge Investment Company Ltd Vs Director, Singida Municipal Council***, Commercial Case No. 16 of 2015 and ***Pradeep Kumar Gajjar & 2 ors Vs Vita Grains Ltd***, Miscellaneous Commercial Cause No. 16 of 2015 (all unreported). In view of the fact I still hold the same position today, I will reiterate my discussion on the point in this ruling.

It is generally agreed that in civil cases, the general rule is that a successful party must have its costs. This is derived from the provisions of subsection (2) of section 30 of the CPC which require the court to assign reasons in case it does not order costs to follow the event. The subsection reads:

> "Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing."

This general rule was underscored in ***Hussein Janmohamed & Sons Vs Twentsche Overseas Trading Co. Ltd*** [1967] 1 EA 287, I quote from the headnote, as follows:

> "The general rule is that costs should follow the event and the successful party should not be deprived of them except for good cause".

And the court went on to quote from **Mulla: the Code of Civil Procedure**, 12th Edition, at Page 150 where it is stated:

> "**The general rule is that costs shall follow the event unless the court, for good reason, otherwise orders.** This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The court may not only consider the conduct of the party in

the actual litigation, but the matters which led up to the litigation."
[Emphasis supplied].

The above paragraph in the 12th Edition has been improved in the 18th Edition (2011) of the same legal work by Sir Dinshah Fardunji Mulla, at page 540 as follows:

> "**The general rule is that costs shall follow the event unless the court, for good reason, otherwise orders. Such reasons must be in writing.** This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him; and this rule applies even to proceedings in writ jurisdiction."
> [Emphasis mine].

The general rule has also been discussed by this court in at some length in ***Nkaile Tozo Vs Philimon Mussa Mwashilanga*** [2002] TLR 276 and ***In The Matter of Independent Power Tanzania Ltd and In The Matter of a Petition by A Creditor For An Administration Order By Standard Chartered Bank (Hong Kong) Ltd*** Misc. Civil Cause No. 112 of 2009 (unreported). In these two decisions, this court referred to a string of authorities on the point. Such authorities include ***Hussein Janmohamed &*** (supra), ***Karimune and others Vs the Commissioner General for Income Tax*** [1973] LRT n. 40, ***N. S Mangat Vs Abdul Jafer Ladak*** [1979]

LRT n. 37, ***M/S Umoja Garage Limited Vs National Bank of Commerce***, High Court Civil Case No. 83 of 1993 (unreported), ***Njoro Furniture Mart Ltd Vs Tanzania Electric Supply Co Ltd*** [1995] TLR 205 and ***Kennedy Kamwela Vs Sophia Mwangulangu & another*** HC Miscellaneous Civil Application No. 31 of 2004 (unreported). I share the reasoning and verdicts in the ***Nkaile Tozo*** and ***Standard Chartered*** cases (supra) as depicting the correct position of the law on the point in this jurisdiction.

For the avoidance of doubt, I must state at this juncture, that I am aware that the authorities cited above were dealing with costs in a suit. However, I have no iota of doubt that the principle can be applicable to situations like the present one.

Mr. Mkumbukwa, learned counsel for the applicant seems to argue that this court should depart from the general rule because the application has not been argued. With respect, I find myself unable to swim his current. The fact that the application has not been argued does not seem to me to be good reason to depart from the long established principle of law that costs must follow the event.

In the situation at hand, certainly, the respondents filed the counter-affidavits and must have spent time and resources in preparation of the application including entering appearance several times in this court. These are costs involved in the application which the applicant must shoulder. I find no sufficient reason why the respondents should be deprived of the same.

On this point, I find it irresistible to quote the statement of Bowen, L.J. in ***Cropper Vs Smith*** (1884), 26 Ch. D. 700, at p. 711, quoted by the High Court of Uganda in ***Waljee's (Uganda) Ltd Vs Ramji Punjabhal Bugerere Tea Estates Ltd*** [1971] 1 EA 188. His Lordship referred to costs as a cure-all medicine in the following terms:

> "I have found in my experience that there is one panacea which heals every sore in litigation and that is costs. I have very seldom, if ever, been unfortunate enough to come across an instance where a party ... cannot be cured by the application of that healing medicine".

In a somewhat similar tone, this court [Othman, J. (as he then was – now Chief Justice of Tanzania)] echoed the excerpt in ***Cropper Vs Smith*** in the ***Kennedy Kamwela*** case (supra) when confronted with an identical situation. His Lordship simply but conclusively remarked:

> "Costs are one panacea that no doubt heals such sore in litigations".

I share the sentiments of Their Lordships in the foregoing quotes respecting costs as a panacea in litigation. To borrow Their Lordships' words, I feel comfortable to recapitulate that costs are one panacea that soothes the souls of litigants that, in the absence of sound reasons, as is the case in the present instance, this court is not prepared to deprive the respondent of. These are

foreseeable and usual consequences of litigation to which the applicant is not exempt.

In the upshot, I decline the invitation by Mr. Mkumbukwa, learned counsel for the applicant and, accordingly, proceed to order that this application is marked withdrawn at the instance of the applicant with costs to both respondents.

Order accordingly.

DATED at DAR ES SALAAM this 8th day of December, 2015.

J. C. M. MWAMBEGELE
JUDGE