

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISC. COMMERCIAL APPLICATION NO. 139 OF 2014**

**THE BOARD OF TRUSTEES OF  
CHAWENUT INDUSTRY  
DEVELOPMENT TRUST..... APPLICANT**

***VERSUS***

**HAMMERS INCORPORATION CO.  
LIMITED..... RESPONDENT**

**RULING**

**Mansoor, J:**

**Date of Ruling- 5<sup>th</sup> AUGUST 2015**

The Applicant filed an application for extension of time to file a Notice of Appeal, and a letter requesting for copies of



Proceedings, Judgement and Decree against the Judgement and Decree of the High Court of Tanzania, (Commercial Division) in Commercial Case No. 108 of 2013, also for an extension of time to serve the Respondent with a Notice of Appeal and a letter requesting for copies of Proceedings, Judgement and Decree against the Judgement and Decree of the High Court of Tanzania, (Commercial Division) in Commercial Case No. 108 of 2013.

The Applicant to this application was the Defendant in the main case which was before Hon. Nyangarika J. the Applicants filed an application before Hon. Nyangarika J for staying the case pending the reference of the case to arbitration. The judge refused an application, and also refused an application for extension of time to file the written statement of defence, and entered a default judgement in favour of the Respondents.

The Applicants were aggrieved by the decision of this Court by Hon. Nyangarika J, and filed the Notice of Appeal on time, and also applied for copies of Proceedings, Judgement and Decree on time. Unfortunately, the copy of the Notice of Appeal was served to the Respondent out of time, and due to this default, the Notice of Appeal was struck out by the Court of Appeal.



The Applicant filed an application before the Court of Appeal, Misc. Civil Application No. 220/2014, praying for the same orders as in this application. The objection were taken by the Respondent in terms of Rule 47 of the Court of Appeal Rules that the application ought to have been filed in the High Court first, since the High Court and the Court of Appeal have the concurrent jurisdiction. Hon Judge Kileo, JA, upheld the preliminary objections on 23/04/2015, and the Applicants filed this present application on 8/06/2015.

The question that the Applicants seeks the intervention of the Court of Appeal is that they would want the Court of Appeal to determine on the legal important question of law of whether it is proper for a Court to enter a default judgement, when a party to the proceedings pursued an application for stay of proceedings in order to refer the matter to arbitration before taking any other step, and before filing a written statement of defence. And whether it was proper for the Court to enter a default judgement for failure on the part of the defendant to file written statement of defence, while knowing that the defendant was exercising its rights under the law to apply for stay of proceedings pending reference to arbitration, before taking any other step in defending the suit.

This present Application was made under the provisions of Section 14 (1) of the Law of Limitation Act, Cap 89 R:E 2002,



Section 5 (1) (a), Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R:E 2002, Rule 47, Rule 83 (1) and (2), and Rule 84 (1) of the Tanzania Court of Appeal Rules 2009.

A number of cases have been cited by the learned Counsels of both parties in support of this application and in opposing the application. Apart from the provisions of the laws cited by the Applicant in its application which empowers this Court to extend the time for doing any act as prayed in the application, I may turn also to the wording of Section 93 of the Civil Procedure Code, Cap 33 R: E 2002. That section is as follows:

"Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its-discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

It is apparent that, whenever a Court fixes any period for the doing of any act in a suit or proceeding, the act in respect of which the time is fixed must be one prescribed or allowed by the Code, Now, the acts which are so prescribed or allowed by the Code are sufficiently illustrated by the applicant in his submissions but also in the law cited by the Applicant.

The law has fixed the time for filing the notice of Appeal and for serving the Notice of Appeal to the opposite party. The law has also prescribed time for making an application for copies



of proceedings, judgment and decree, and for serving a copy of such an application to the opposite party, and in case the act is not performed within the time so fixed an application can be made for the extension of time and the Court will have full jurisdiction under section 93 of the Code to grant such application, in spite of the fact that the period originally fixed had expired.

Rule 47 and Rule 83 of the Court of Appeal Rules also prescribes an act or allows an act on the part of the Applicant which act has to be performed within the time fixed by the Rules, the act being to file the Notice of Appeal within the time fixed, and to serve the opposite side with the copy of the Notice within the time fixed. Also to file an application before the High Court requesting for copies of Proceedings, Judgement and Decree, and for service of the application to the opposite side. A party can make an application for extension of time and the Court will be perfectly justified and will have full jurisdiction to entertain the application and extend the time for the purpose of enabling the Applicant to file the Notice of Appeal out of time, to serve the Notice of Appeal out of time, to make an application for applying for copies of proceedings judgment and decree out of time, and for serving the copy of the application for applying copies of the proceedings, judgment and decree out of time. Such an application was made after the period originally fixed had expired.



The Court has a discretion under these provisions of the law and the Rule either to grant the application or to reject it. In either event, it has to apply its mind to the facts put before it in order to satisfy itself whether the Applicant was prevented by any sufficient cause from filing the Notice of Appeal on time or for serving the opposite party with the Notice of Appeal on time, or for applying for copies proceedings judgement and decree on time or, as the case may be.

On the materials placed before this Court, this Court is satisfied that there was sufficient ground preventing the Applicant from filing the Notice of Appeal on time or for serving the opposite party with the Notice of Appeal on time, or for applying for copies proceedings judgement and decree on time

Accordingly, the application for extension of time made by the Applicant in this application for extension of time for filing the Notice of Appeal is allowed. It was not necessary for a prayer of an extension of time for filing a Letter requesting for copies of Proceedings Judgement and Decree as the Letter was filed on time, and is still valid. The dates for serving the Notice of Appeal and copies of the Letters to the opposite party runs from the date of this Order.

In the result, the application is allowed with an order that costs shall follow the events.



Application allowed.

DATED at DAR ES SALAAM this 5<sup>th</sup> day of AUGUST, 2015

*Mansoor*

**MANSOOR**

**JUDGE**

**5<sup>th</sup> AUGUST 2015**

