

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

**COMMERCIAL CASE NO. 1 OF 2009**

**TANZANIA NATIONAL ROADS (TANROADS) ..... PLAINTIFF**

**VERSUS**

**NATIONAL BANK OF COMMERCE (NBC) ..... RESPONDENT**

**RULING**

**Mruma, J.**

On 11/6/2014 this matter was adjourned sine die (i.e. without assigning a day for further action). Although no reason was assigned for its adjournment sine die but records would suggest that it was so adjourned pending the determination of another matter i.e. **Civil Case No. 90 of 2008** which was pending before the High Court Main Registry at Dar es Salaam.

For 20 months subsequent to the order adjourning the matter sine die (i.e. order dated 11/6/2014), nothing was done on the records and no party applied to the court for purposes of informing it what was the status of Civil Case No. 90 of 2008 which was said to be pending in the main registry at Dar es Salaam.

On 18/2/2016 I made an order to the effect that parties or their respect counsels appear before me on 29/2/2016 at 12:00 Noon so that we could chat the way forward for this matter which had been banked in the shelves of this court for a period of over seven **(7) year's**, and accordingly turned this court into a bank of cases rather than a court of law.

Mr. Sadi Rashid, Learned advocate addressed me on behalf of the plaintiffs; Tanzania National Roads Agency (Tan Roads) and Mr. Gasper Nyika learned advocate submitted on behalf of the defendants the National Bank of Commerce Limited. The main issue I wanted them to address me was whether in view of the last order of this court (Nyangarika J), dated 11/6/2014 which adjourned the case sine die "with leave to apply" and in absence of any application within six months of the last adjournment, as required by **Rule 47 of the High Court (Commercial Davison) Procedure Rules 2012**, the matter was still legally pending in this court.

Mr. Sadi Rashidi was of the view that because this matter was stayed pending determination of **Civil Case No. 90 of 2008** which was pending before the High Court at Dar es Salaam registry which had been determined but still there is a notice of appeal to the Court of Appeal, this matter is still subjudice and it has to continue to be stayed pending the determination of the intended appeal by the Court of Appeal.

On the other hand Mr. Gasper Nyika was of a different view. The learned counsel was of the view that in view of the wording of last order of this court (Nyangarika, J) which adjourned the matter sine die and in view of the fact that no application had been made within the period of six

months after the last adjournment, this matter should be dismissed pursuant to mandatory requirement of **Rule 47 of the High Court (Commercial Division) Procedure Rules 2012** which provides that:-

***"When the hearing of a suit has been adjourned the court shall, if no application is made within six months of the last adjournment, dismiss the suit".***

The term "adjourned generally" is not defined in the Rules, however, looking at the marginal notes of the said **Rules (i.e. Rule 47)**, it would appear that the Rule caters for matters adjourned sine dic. This is so because the marginal notes (which in essence are internal aids to interpretation of the corresponding provisions of the law) provides clearly that it is for proceedings where no application is made on the suit adjourned sine dic. It is therefore my considered view that Rule 47 of the Rules was introduced to tighten the provisions relating to adjournment which is found under **Order XVII of the Civil Procedure Code**. Prior to the coming into force of the **High Court (Commercial Division) Procedure Rules, 2012, Rule 4 of the Said Order XVII of the Civil Procedure Code [Cap 33 RE 2002]** was used to curb abuses of general adjournments under **Order XVII** of the **Civil Procedure Code**. The Rule provided for a similar procedure where the hearing of the suit had been adjourned generally and no application is made within a period of twelve months.

Apparently the law enforcers discovered that the problem of delays and backlogs in this otherwise fast track division of the High Court are

substantially caused by too many adjournments which are granted by the court in any one particular case. They accordingly designed ways of stopping them and hence the introduction of Rule 47 of the High Court (Commercial Division) Procedure Rules. Some of these adjournments were granted sine die and without assigning a day for further meeting or hearing. The introduction of **Rule 47 of the High Court (Commercial Division) Procedure Rules**, was intended to stop abuses on adjournments both pre-trial and post trial adjournments. These adjournments include both generally and adjournment sine die as a consequence of which where a matter has been adjourned generally or sine die (as it was in this case) and no step is taken by the parties for a period of six months after adjournment the case has to be dismissed.

As correctly submitted by Mr. Nyika, the law under Rule 47 is couched in mandatory language "shall" which means that it is a must for the court to dismiss the suit where no application is made within a period of six months from the last adjournment.

Mr. Sadi Rashid has submitted that the provisions of Rule 47 do not apply in these proceedings because the matter in these proceedings were adjourned pending determination of **Civil Case No. 90 of 2008** which is pending in the High Court main registry at Dar es Salaam. While I agree with him that adjournment pending determination of another suit in which the matter in issue is also directly and substantially in issue in a suit under consideration (i.e. stay of proceedings) may be different from adjournment sine die particularly so because staying of proceeding entails adjourning the


proceedings pending the occurrence of another event (determination of a previously instituted suit), while adjournment sine die entails adjournment for an indefinite period that is to say the period for which the matter is stayed there is no possibility of proceeding with the matter in the foreseeable future. However in any event both situations fall under **Rule 47 of the High Court (Commercial Division) Procedure Rules 2012**. The Rule doesn't give exceptions. In other words whether the matter was adjourned generally or sine die or whether it was stayed (which in essence is an adjournment), under the provisions of Rule 47 parties or any of them have within a period of six months of the last adjournment to move the court by an application. The purpose of the application is to update the court and the parties in general on what is up after the last adjournment. This is an important measure aimed at making sure that all players are kept abreast of what is going on. It is also geared to reducing complaints against the court and against advocate whose client may lose confidence on suspicion that he/she does conspire with the other advocate to delay the case. It brings about transparency in proceedings.

Admittedly it is a matter of consensus that the interest of all parties in the proceedings is that justice is done speedily, cheaply and fairly. Delays causes social and economic disruptions and particularly so in administration of commercial Justice, no wonder the promulgation of the **High Court (Commercial Division) Procedure Rules, 2012**.

In the case at hand although the proceedings were instituted in 2009 which is a period of three years before the **High Court (Commercial**

**Division) Procedure Rules GN No. 250** came into force but the order the subject of this ruling was made on 11/6/2014 two years after the Rules were declared operative. As stated hereinbefore Rule 47 enjoins the court to dismiss the suit if no application is made within six months of the last adjournment. No application had been made since this matter was adjourned sine die on 11/6/2014. In terms of **Rule 47 of the High Court (Commercial Division) Procedure Rules 2012**, I would proceed to dismiss the suit. In normal course of the things costs follow the event. The issue of costs has involved my mind greatly in this matter. The suit was instituted by Tanzania National Roads Agency (Tanroads), the defendants the National Bank of Commerce raised some issues as a result of which the matter was put in abeyance for quite a long time. No party made an application as required by **Rule 47 of the High Court (Commercial Division) Procedure Rules** as conversed above. The court suo motu invited parties to address it on the pendency of the suit and consequently found that its abeyance contravenes the mandatory requirement of Rule 47. In this circumstance I find that each party has a blame in the final result of this matter. Accordingly I order that each party shall bear own costs.

Order accordingly.

  
**A. R. Mruma**

**JUDGE**

**16/3/2016**

