

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 152 OF 2015

KEC INTERNATIONAL LIMITED.....PLAINTIFF

VERSUS

AZANIA BANK LIMITED.....DEFENDANT

RULING

Mansoor, J:

Date of RULING- 19TH FEBRUARY 2016

The Counsel for the plaintiff, Ms Jacqueline Kapinga, raised an objection that the written statement of defence was filed out of the prescribed time. She relied on the provisions of Rule 20 (1) of the High Court (Commercial Division) Procedure Rules, 2012 which provides that “*the defendant shall, within*



twenty one days from the date of service of the summons file to the Court a written statement of defence.” She said the summons was served upon the defendant on 20th January 2016, and 21 days lapsed on 9th of February 2016, the written statement of defence filed on 10th February 2016, was therefore out of time, and filed in court without the leave of the court, and she prayed that the written statement of defence should not be accepted, and a default judgement be entered against the defendant as there is no proper defence before the Court.

Mr Malimi, the Counsel for the Defendant had submitted that, yes, he received the summons on the 20th January 2016, and he filed the written statement of defence on 10th February 2016. He said the 21 days expired on 10th February 2016, and not on the 9th of February 2016, as the date on which the summons was received is excluded from counting the periods of limitations. He relied on Section 19 (1) of the Law of Limitations Act, which provides as follows:

“19.-(1) *In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded.*”

He said, the date on which the defendant had received the summons should be excluded from computing the 21 days, as that date is the day from which such period of 21 days is to be computed. He said he has filed the written statement of defence on the 21 days counting from 21st January 2016, as the date of 20th January 2016 should be excluded from computation of the period of limitation, as provided by Section 19(1) of the Law of Limitation Act.

I have carefully considered the submissions of both the Learned Counsels, and I have this to say: a careful reading of the language in which Rule 20 (1) of the High Court Commercial Rules, 2012, has been drafted, shows that it casts an obligation on the defendant to file the written statement of defence within 21 days from the date of service of summons on him. Ordinarily, the time schedule prescribed by Rule 20 sub



rule 1 of the High Court, Commercial Rules has to be honoured. The defendant should be vigilant. No sooner the summons is served on him he should take steps for drafting his defence and filing the written statement within 21 days from the date he received the summons. However Rule 20 (1) of the Commercial Court Rules does not deal with limitations, and the manner on which the dates or periods of time in proceedings should be counted. The manner in which the dates or periods of time in any proceedings should be counted is as provided by Section 19 (1) of the Law of Limitation Act, Cap 89 R: E 2002, and also as provided in the Interpretation of Laws and General Clauses Ordinance, Act No. 1 (R:E) 2002; Section 60(1) of Cap 1, reads:

60.-(1) *In computing time for the purposes of a written law—*

(a) where a period of time is expressed to be at, on, or with a specified day, that day shall be included in the period;



(b) where a period of time is expressed to be reckoned from, or after, a specified day, that day shall not be included in the period;

Section 60(1) (b) of Cap 1 is relevant in the present situation. The word used in Rule 20 (1) of the High Court Commercial Division Procedure Rules is “*within 21 days **from***” and as prescribed by Section 60(1) (b) of Cap 1, “*where a period of time is expressed to be reckoned **from***”, or where the word “***from***” is used in prescribing the period of time, then that day is excluded in the period.

The period of 21 days for filing the written statement of defence will be reckoned from the date immediately following the date on which the period of 21 days from the date of receipt of the summons.

Considering the facts and circumstances of this case, it has to be held that the summons was received on 20th January 2016, 21 days fell on 10th February 2016, the date of receipt or the



date of service of the summons according to Section 19(1) of the Law of Limitation Act, Cap 89 R:E 2002, and according to Section 60 (1) (b) of the Interpretation of Laws and General Clauses Act, Cap 1 R:E 2002, was within 21 days therefrom. That day (20/1/2016) is to be excluded for counting the period of twenty one days. The written statement of defense was filed by the defendant on 10/02/2016. The result would be that the written statement of defense filed on 10th /02/2016 is within the stipulated period and within time.

The objection raised by the plaintiff's counsel is therefore overruled and dismissed with costs.

DATED at DAR ES SALAAM this 19TH day of FEBRUARY, 2016



MANSOOR

JUDGE

19TH FEBRUARY 2016

