

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

MISCELLANEOUS COMMERCIAL CAUSE NO. 162 OF 2015
(Arising from Commercial Case No. 128 of 2014)

RELIANCE INSURANCE COMPANY (T) LIMITED APPLICANT

VERSUS

RUVU GEMSTONE CO. LTD RESPONDENT

1st December, 2015 & 18th February, 2016

RULING

MWAMBEGELE, J.:

This is a ruling in respect of an application filed by the applicant Reliance Insurance Company (T) Limited for extension of time to file witness statement and list of exhibits. It has been taken under the provisions of section 95 of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002 and supported by an affidavit of Deocress M. Bantulaki.

The application was argued before me on 01.12.2015 during which Mr. Turyamwesiga, learned counsel, appeared for the applicant and Mr. Mushi, learned counsel, appeared for the respondent. The oral hearing was

preceded by the learned counsel for the parties filing skeleton written argument as dictated by the provisions of rule 64 of the High Court (Commercial Division) Procedure Rules, 2012 – GN No. 250 of 2012 (henceforth “the Rules”).

The reasons for the delay, as can be gleaned from the affidavit in support of the application, skeleton written arguments and the oral hearing are that the deponent travelled to Serengeti on 17.06.2015 without knowledge of the need to sign the relevant witness statement; the relevant air ticket has been appended to the affidavit. The deponent states further in the affidavit that he came back by a private car on 25.06.2015 which is the day the seven days fixed by the law lapsed.

The averments have been strenuously denied and disputed by Mr. Mushi, learned counsel for the respondent. The learned counsel cites ***Lucy Chimba Bahonge Vs Suleiman Rashid Juma***, Civil Application No. 8 of 2005 (CAT unreported) to buttress the proposition that the criteria used in determining whether extension of time should be granted or not is whether sufficient reason has been adduced. The learned counsel argues that no sufficient reason has been given and thus urges the court to hold that failure to file the statement is tantamount to failure to procure a witness as was the case in ***Barclays Bank Tanzania Limited Vs Tanzania Pharmaceutical Industries Ltd & 3 ors*** Commercial Case No. 147 of 2012 (unreported).

As rightly put by Mr. Mushi, it is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently

established that the delay was with sufficient cause - see: ***Ratnam Vs Cumarasamy and another*** [1964] 3 All ER 933, ***Mumello Vs Bank of Tanzania*** [2006] 1 EA 227, ***Tanga Cement Company Vs Jumanne D. Masanwa & Anor***, Civil Application No. 6 of 2001 (CAT unreported), ***Kalunga and Company Advocates Vs National Bank of Commerce Ltd and Another, Civil Application No. 124 of 2005, Regional Manager, TANROADS Kagera Vs Ruaha Concrete Company Limited***, Civil Application No. 96 of 2007 (CAT unreported) and ***Lucy Chimba Bahonge Vs Suleiman Rashid Juma***, Civil Application No. 8 of 2005 (CAT unreported), to mention but a few.

In the instant case, the reasons brought to the fore for the delay that Mr. Decress Bantulaki who was to sign the statement had travelled to Serengeti on 17.06.2015 without knowledge of the need to sign the relevant witness statement and the air ticket to that effect has been appended to the affidavit. It is stated further that he returned by a private car on 25.06.2015 which is the day the seven days fixed by rule 49 (2) of the Rules elapsed.

I think the applicant has sufficiently demonstrated to the satisfaction of the court on a balance of probabilities why it could not file Deocress Bantulaki's witness statement in the prescribed time. The appendance with the affidavit the air ticket dated 17.08.2015 in the name of Deocress Bantulaki and the affidavital statement to the effect that he returned on 18.06.2015 is sufficient enough to show that what the applicant states, on a balance of probabilities, is but true. I would grant this application.

In the upshot, I find merit in this application and proceed to grant it. I consequently order that the applicant should file Deocress Bantulaki's witness statement together with its attachments, if any, within seven days from the date hereof. The circumstances of this application are such that there should be no order as to costs. I thus order that each party, as far as this application is concerned, should bear its own costs.

Order accordingly.

DATED at DAR ES SALAAM this 18th day of February, 2016.



J. C. M. MWAMBEGELE
JUDGE

