IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL CAUSE NO. 118 OF 2015

(Arising from Commercial Case No. 37 of 2015)

MMG GOLD LIMITED ..... APPLICANT

VERSUS

HERTZ TANZANIA LIMITED ..... RESPONDENT

30th May & 14th July, 2016

RULING

MWAMBEGELE, J.:

This is a ruling in respect of an application by MMG Gold Limited for extension of time within which to file an application for leave to defend Commercial Case No. 37 of 2015; a Summary Suit filed by Hertz Tanzania Limited. The application has been taken under the provisions of section 14 (1) and (2) of the Law of Limitation Act, Cap. 89 of the Revised Edition, 2002 and section 95 of the Civil Procedure Act, Cap. 33 of the Revised Edition, 2002.

The application was argued before me on 30.05.2016. Both the applicant and respondent companies were represented. The applicant was represented by

Mr. Innocent Mushi, learned counsel whereas the respondent had the representation of Mr. Themistocles Rwegasira, also learned counsel.

As can be gleaned in the affidavit in support of the application (whose some of its paragraphs were struck off by a ruling of this court dated 18.02.2016) as well as the skeleton arguments and the oral arguments before me the applicant has beaconed his reason for delay on the fact that there were some negotiations going on between the parties. Under a belief that a settlement would be reached and a Deed of Settlement eventually filed, the applicant could not file any application for leave to defend the suit hence this application.

The reasons given by the applicant are vehemently labeled by the learned counsel for the respondent as not sufficient to warrant the court grant the order sought. The learned counsel for the respondent submits that there were no such negotiations and that that has been aptly stated in the counter-affidavit. The learned counsel for the respondent states that no sufficientreason for delay has been given and the reason offered by the applicant has not been bona-fidely given. He thus prays that the application should be dismissed with costs.

In a short rejoinder, the learned counsel for the applicant reiterates what he stated in the submissions in chief and adds that the draft Deed of Settlement was appended to the skeleton arguments to verify his averment.

I have subjected the learned rival arguments by the learned counsel for both parties to serious consideration they deserve.

As must be abundantly clear to the learned counsel for the parties, in order for an application of this nature to succeed, there must be given sufficient

reasons to the satisfaction of the court why the application was not made in time. It is well settled now 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.

What amounts to reasonable or sufficient cause has not been defined under section 14 (1) of the Law of Limitation Act, under which the applicant has, *inter alia*, made his application. The reasons why there in no such explanation was explained better by this court (Mwandambo, J.) in an unreported decision of ***Emmanuel Billinge Vs Praxeda Ogweyo & Anor*** Misc. Application No. 168 of 2012 in the following terms:

> "... what constitutes reasonable or sufficient cause has not been defined under the section because that being a matter for the court's discretion cannot be laid down by any hard and fast rules but to be determined by reference to all the circumstances of each particular case."

As was held in the ***TANROADS Kagera*** case (supra), the question being within the discretion of the court, an applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time limited by the rules.

In the case at hand, the material brought to the fore by Mr. Mushi, learned counsel for the applicant, on which this court is beckoned to exercise its discretion is that under the belief that the matter could be settled out of court, a Deed of Settlement could be filed in court and that would be the end of the matter. I find this material too cheap to buy. I have two reasons for such a stance; first, I have serious doubts if the applicant could legally be allowed to file a Deed of Settlement before he could be allowed to defend the suit. It is my thinking that the defendant was not a party to the summary suit until he was made a proper party to it by granting her an application for leave to defend. In my view, it is upon the grant of leave to defend a summary suit which gives a defendant *locus standi* to do any act, including filing a Deed of Settlement, in the suit. Secondly, the fact that it was believed that the parties could reach a settlement and perhaps a Deed of Settlement filed, did not, after all, legally restrain him from filing the application for leave to defend the suit. I do not think the defendant was sure 100% that a settlement would be reached. Therefore the defendant ought to have been careful by taking precautionary measure in case the alleged negotiations failed as happened.

In my considered view, the material brought to the fore by the applicant on which this court can exercise discretion to grant the orders sought is, to say the least, frivolous. What becomes apparent is but sheer negligence and inaction on the part of the applicant. The applicant and her counsel must be aware that this court has discretion to extend time under section 14 of the

Law of Limitation Act but that such extension, as already stated above, is only exercisable upon sufficient reason been given by the applicant. That is to say, only sufficient cause for the delay, and not sympathy, will make an application of this nature succeed. I wish to associate myself with a fairly old decision of this court (Sir Ralph Windham, CJ) of ***Daphne Parry Vs Murray Alexander Carson*** [1963] 1 EA 546 at 549 at which the following passage was quoted from Rustomji, at page 88 of the 5th Edition of his **Law of Limitation** putting this position after considering a number of Indian decisions upon the proper exercise by the court of its discretion to enlarge time under section 5 of the Indian Limitation Act, 1908 which is *in pari materia* with section 14 of our Law of Limitation Act:

> "Though the court should no doubt give a liberal interpretation to the words 'sufficient cause', its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, **the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant.**"
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> [Emphasis supplied].
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> See also: ***Daud s/o Haga Vs Jenitha Abdon Machafu***, Civil Application No. 19 of 2006 (CAT unreported) and ***Coca Cola Kwanza Limited Vs the Hon. Minister for Labour & 2 Ors***

Miscellaneous Civil Application No. 197 of 2013
(unreported, Mwandambo, J.).

The above said, I really sympathize with the applicant but this being a court of law and not one of sympathy, I have no option but to refuse the application. Consequently, I find the present application seriously wanting in merit and proceed to dismiss it with costs to the respondent.

Order accordingly.

DATED at DAR ES SALAAM this 14th day of July, 2016.

J. C. M. MWAMBEGELE

JUDGE