

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR-ES-SALAAM.

MISCELLANEOUS COMMERCIAL APPLICATION NO. 287 OF 2016

(Originated from Commercial Case No. 87 of 2016)

**KG CORPORATION GROUP LTD APPLICANT/DEFENDANT
VERSUS
SAID SALIM BAKHRESA & CO. LTD RESPONDENT/DEFENDANT**

RULING

MRUMA, J:

This is a ruling on the application by the Defendant (Judgment Debtor) for extension of time within which he can request for time to pay the sum of U\$ 30,851.80 which he admitted as amount due and payable to the Plaintiff. Following his admission, a judgment on admission was entered for the Plaintiff in terms of Rule 4 of Order XII of the Civil Procedure Code.

The Application is brought under Section 14 (1) of the Law of Limitation Act and Rule 25 of the High Court (Commercial Division) Procedure Rules GN No. 250 of 2012, and as is the practice it is supported by the affidavit of the Applicant Dan Kay Ngowi, director of the Judgment debtor's Company. In paragraph 8 of the affidavit of Dan Kay Ngowi, he averred that he is unable to pay the decreed amount now due to financial constraints facing the company and he attached to his affidavit as

annexture KG CCL 3 financial statements and bank Account statement.

Rule 25 (3) of the High Court (Commercial Division) Procedure Rules 2012 provides that the Defendant's request for time to pay shall be supported by a statement of his financial position including details of his bank accounts. As stated here in before annextures KG CGL 3 attached to the affidavit of Dan Kay Ngowi is the financial statements of the Judgment Debtor's company. According to these statements the closing balance as at 14th November 2016, was Tshs minus -500,553,647.25. It is on the basis of this financial doldrium that the applicant is inviting the court to consider his application for extension of time within which he can request for time to pay.

Under Rule 25 (3) of the High Court (Commercial Division) Procedure Rules, powers to consider request for time to pay is vested with the Registrar of this court. Thus, I think the only application which I can deal with here is the application for extension of time within which the applicant can make an application for request for time to pay. This application (for extension of time is pegged under Section 14(1) of the Law of Limitation Act (Cap 89 RE 2002) which provides that:

"Notwithstanding the provisions of this Act, the Court may for any reasonable or sufficient cause extend the period of Limitation for the institution of an appeal or an application other than an application for execution of a decree and an application for extension may be either before or after expiry

of the period of Limitation prescribed for such appeal or application.”

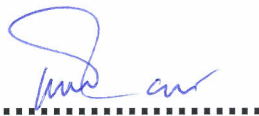
From the above quoted Law, Courts have discretion to extend the period of Limitation upon reasonable or sufficient cause. In the present case in terms Sub- Rule (2) of Rule 25 of the High Court (Commercial Division) Procedure Rules, the Applicant ought to have filed his request for time to pay with his admission. The Applicant's admission is contained in paragraph 6, 8, and 11 of his written statement of defence which was presented for filing on 20th September 2016, thus his request for time to pay ought to have been filed on the same day. The question that follows therefore is; is there any reasonable or sufficient cause advanced to account for the delays from 20th September 2016 up to 16th November 2016, when this application was filed?

In paragraphs 2 and 3, the Applicant contends that he did not file his request to pay because the Respondent did not file a reply to the written statement of defence to acknowledge that the only outstanding amount was U\$ 30,851.80 and not U\$ 61,703.60 as claimed in the plaint till she did it orally in court on 11th November 2016.

I have carefully considered the applicant's application and argument and I have come to a conclusion that the Respondent's failure to file a reply to the written statement of defence and acknowledge the Applicant's/Defendant's admission of the claim cannot be reasonable or sufficient cause within the ambit of Section 14 (1) of the Law of Limitation Act. As it was held in the case of **Daphine Party Versus Murray Alexander Carson (1963) EA 546** the interpretation of the words

sufficient cause must be in accordance with judicial principles. Admission of the claims or part of the claims in the suit is not incumbent upon being acknowledged by the Defendant. The Applicant ought to have filed his request for time pay together with his admission statement which he did not. He cannot blame his inaction on the Plaintiff who was not obliged to acknowledge the Defendant's admission. The law is clear under the provisions of **Rule 1 of Order XII of the Civil Procedure Code**, that any party to a suit may give notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the case of any other party. In the present case the Applicant admitted (by his pleadings) part of the Plaintiff's /Respondent's claims and accordingly a judgment on admission was entered pursuant to the provisions of Rule 4 of that Order. Thereafter the court was prepared to proceed to determine the Respondent's claims which were disputed by the Applicant but it did not do so because the Respondent conceded that the admitted sum was the only amount outstanding against the Applicant.

Thus, much as I can sympathize with the Applicant's predicament, but this being a Court of Law (and not a Court of sympathy) must guard itself against the danger of being led away by sympathy. The Application has to be and is hereby dismissed for being devoid of merits. I make no orders as to the costs.



A. R. Mruma

JUDGE

9/3/2017

Date: 9/3/2017

Coram: Hon. A.R. Mruma, Judge

For the Applicant: Mr. Francis Jolison (Legal Officer of the Applicant)

For the Respondent: Mr. Kambo for the Respondent

CC: Cosmas

COURT:

Ruling delivered.



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A. R. Mruma

JUDGE

9/3/2017