

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL CASE NO. 202 OF 2017
(Arising from Misc. Commercial Cause No. 6 of 2003)

CITIBANK TANZANIA LIMITED

APPLICANT

VERSUS

TANZANIA TELECOMMUNICATIONS COMPANY LTD...

1st RESPONDENT

TANZANIA REVENUE AUTHORITY.....

2nd RESPONENT

TANZANIA COMMUNICATIONS

REGULATORY AUTHORITY (AS SUCCESSOR TO THE

TANZANIA COMMUNICATION'S COMMISSION

3rd RESPONDENT

VIP ENGINEERING AND MARKETING LIMITED.....

4th RESPONDENT

THE JOINT LIQUIDATORS OF TRI-TELECOMMUNICATION

TANZANIA LIMITED (IN LIQUIDATION)


5th RESPONDENT

RULING

Date of the Last Order: 19/07/2018

Date of the Ruling 31/07/2018

SEHEL, J.

This is a ruling on application for extension of time within which the applicant can make an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court delivered by Honorable Justice Kimaro, J (as she then was) dated 

7th day of June, 2003 in Miscellaneous Commercial Cause No. 6 of 2003. The application is made under Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 and it is supported by an affidavit of Dilip Kesaria, advocate for the applicant.

It is perhaps proper at this juncture to preface present application with an epilogue that led to the present application. The story goes as follows: on 17th day of February, 2003 a compulsory winding up petition was presented to this Court by Tanzania Telecommunication Company Limited (1st respondent); Tanzania Revenue Authority (2nd respondent); and Tanzania Communications Commissions (now known as Tanzania Communication Regulatory Authority) (3rd respondent)) for winding up and appointment of the liquidators of Tri-Telecommunication (T) Limited (now under liquidation) (5th respondent)). Following the advertisement of the petition, VIP Engineering and Marketing Ltd (4th respondent) filed a notice of intention to appear to support the petition as creditor and shareholder of the 5th respondent. The proceedings of Misc. Commercial Cause No. 6 of 2003 show that the 5th respondent had

no objection for winding up, its concern was the debenture instrument that appointed receivers/managers Mr. Anael P. Kavishe and Gottfried S. Tesha. The 5th respondent alleged at the trial that it executed a Debenture Instrument with Citibank Tanzania (the applicant) and thus prayed for provisional liquidator to be appointed so that can work hand in hand with the receivers/managers.

The trial court after hearing the parties ordered, amongst others, for winding up of the 5th respondent and annulled the Debenture Instrument. Following the ruling of the trial Court, the applicant employed futile attempts trying to overturn it. The last attempt was in Civil Appeal No. 23 of 2008 which was struck out by the Court of Appeal for containing defective drawn order. As the applicant is still aggrieved with the ruling of this Court, she has come again to this Court seeking for an extension of time to lodge notice of appeal out of time.

In her application, the applicant contended that the proceedings in Misc. Commercial Cause No. 6 of 2003 were fraught

with several irregularities and illegalities which need to be examined by the Court of Appeal of Tanzania. It is further averred in the affidavit in support of the application that the Court of Appeal of Tanzania has also determined that the impugned decision was tainted with illegalities because several adverse orders were made against the applicant without affording the applicant the opportunity of being heard.

All respondents were duly served with the application but only the 1st, 3rd and 4th respondents filed their counter affidavits to oppose the application. The 1st and 3rd respondents made similar statements in their counter affidavit that the applicant failed to interpret and comply with the rules of the Company Winding Up Rules 1929 (Imperial) and that the grant of leave to appeal would delay the course of justice to the respondents. The 4th respondent stated that the applicant failed to advance sufficient reason for extension of time and that the applicant being a party to the appointment of the joint liquidators then the applicant is stopped from interfering with the joint liquidators activities. It further stated that any irregularities

and illegalities should be particularized before the Jointly appointed liquidators.

The application was heard orally on 19th day of July, 2018 and prior to the oral hearing, the applicant and the 4th respondents duly comply with rule 64 of the High Court (Commercial Division) Procedure Rules GN 250 of 2012 by filing their skeleton arguments of which the counsels adopted them in their oral submissions to form part of their submissions.

Counsel Kesaria appeared to argue the application wherein he briefly empathized few points that the applicant obtained leave to file notice of appeal and that the said notice was duly filed. He contended that a party cannot apply for leave without filing notice of appeal therefore upon filing notice of appeal then the applicant is now seeking extension of time to apply for leave to appeal to the Court of Appeal of Tanzania. He said the application is made under Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 and it is supported by his affidavit of which he adopted the contents therein. He further argued that same reasons given in granting extension of

time for filing notice of appeal prevail over the present application. He attacked the arguments made by the 4th respondent in its skeleton arguments in respect for leave as being irrelevant. Regarding appointment of joint liquidator, he said the joint liquidators had to be appointed so as to allow appeal process to take place which appeal was later on struck.

Counsel Didas who appeared to represent the 4th respondent briefly submitted that though the Court has discretionary powers to grant it but there are tests which the Court need to take into account in exercising its discretionary powers. He argued the applicant failed to advance any sufficient reason for the grant of the extension of time. He therefore prayed for the application to be dismissed with costs.

The submissions made by Counsel Didas were fully adopted by counsel Magambo who appeared to represent the 1st respondent and he had nothing more to add.

It was rejoined by insisting that the affidavit extensively exhibited sufficient reason and that the application was timely made as it was made immediately after the notice of appeal was lodged.

From the submissions made by both counsel it is not disputed that the pertinent issue for determination is whether the applicant has demonstrated good cause to warrant the Court to exercise its discretionary power under Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 which states:

In Tanga Cement Company Limited Vs. Jumanne D. Massanga and Amos A. Mwalwanda, Civil Application No.6 of 2001 (Unreported-CAT) where it was stated that what amounts to good cause includes whether or not the application has been brought promptly, the absence of any valid explanation for the delay and lack of diligence on the part of the applicant.

In VIP Engineering Marketing Limited And 2 Others Vs Citibank Tanzania Limited, Consolidated References No.6, 7 and 8 of 2006 (Unreported-CAT) it was held:

"..... a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay."

The applicant's application for extension of time, to make an application for leave to appeal, centers mainly on the ground of irregularity and illegality.

Learned advocate Didas argued that the alleged illegality no longer exists since the applicant participated in appointing the joint liquidator. It was responded and I entirely subscribe to the submission made by the learned advocate Kesaria that the appointment of the joint liquidators was made after the Court of Appeal of Tanzania directed parties to appoint another liquidator following the demise of the late Bakilana so that an appeal lodged by the applicant, by then, could proceed to the hearing. Consequently, the applicant's complaint on the irregularity and illegality in respect of this Court's ruling in Miscellaneous Commercial Cause No. 6 of 2003 dated 7th June, 2003 still subsists. ~~AMU~~

The complaint raising possible illegality constitutes good cause whether or not a reasonable explanation has been given to account for the delay. (See the case of **VIP Engineering Marketing Limited And 2 Others Vs Citbank Tanzania Limited** (Supra)). In my ruling granting extension of time within which to lodge notice appeal to this same applicant, I stated:

".....from that background it is gathered that the applicant was not a party to the proceedings in Miscellaneous Commercial Cause No. 6 of 2003 and the Court made adverse orders against the applicant by cancelling the debenture instrument which was entered between the applicant and 5th respondent. Since the applicant was not heard then she has arguable case and deserves the extension of time as held by the Court of Appeal."

The same parity of reasoning applies to the matter at hand. Therefore the applicant is hereby granted extension of time within which to make an application for leave to appeal to the Court of Appeal of Tanzania. The application shall be filed within fourteen

(14) days from today's ruling. The costs of the application shall abide to the intended appeal. It is so ordered.

DATED at Dar es Salaam this 31st day of July, 2018.



A handwritten signature in blue ink, appearing to read "B.M.A Sehel".

B.M.A Sehel

JUDGE

31st day of July, 2018.