

IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 92 OF 2018

(Original Commercial Case No 58 of 2018)

ECOBANK TANZANIA LIMITED.....APPLICANT

VERSUS

RWD INVESTMENT COMPANY LTD.....1ST RESPONDENT

STELLA EUNICE MZENGI.....2ND RESPONDENT

RULING

B.K. PHILLIP, J

This ruling is in respect of an application for extension of time to publish a default judgment which was delivered by this court on 4th April 2018 in Commercial case No 58 of 2018. It is made under section 95 of the Civil Procedure Code, Cap 33, R.E 2012, supported by the an affidavit sworn by the applicant's advocate Mr. Lusiu Peter.

A brief background to this matter is that on 8th May 2017 the applicant herein filed a suit in this court against the respondents vide Commercial case No 58 of 2018. On 4th April 2018 Hon. Songoro J, as he then was, entered a default judgement against the respondents following the respondents' failure to file the defence in the said Commercial Case No. 58 of 2018. The applicant was issued with a copy of the default judgement on 6th April, 2018. As per rule 22(2)(a) of the High Court (Commercial Division) procedure Rules,2012 the default judgment was supposed to be published in the newspapers on or before 16th April 2018.The applicant

did not publish the default judgment in time, thus has filed this application for extension of time to publish it.

The reasons for failure to publish the default judgment in time as stated in the affidavit in support of this application are as follows; That the applicant's advocate was issued with the copy for the default judgment on 6th April 2018 in the evening and on 9th April 2018 the applicant's advocate travelled to Arusha to attend the Annual Conference and General meeting of the Tanganyika Law Society. He returned to Dar Es Salaam on 15th April 2018. Copies of the tickets are attached to the affidavit. Furthermore, the learned advocate deponed that on the 16th April 2018, he could not manage to go to his office as it was heavily raining in Dar Es Salaam and his car got a technical fault, so he could not go anywhere.

This court granted leave to applicant's advocate to proceed with hearing of this application ex-parte following the respondents' failure to appear in court despite being dully served with summons to appear in court.

The applicant's advocate filed his skeleton arguments pursuant to rule 64 of the High Court (Commercial Division) Procedure Rules,2012.At the hearing of this application the applicant's advocate started by adopting the contents of his skeleton arguments, in which he submitted that the criteria for the court to grant an application for extension of time as were stated by the Court of Appeal in the case of **Royal Insurance Tanzania Limited Vrs. Kimwengwa Strand Hotel Limited, Civil Application No. 111 of 2009**,(unreported) are; length of delay, reasons for the delay and the decree of prejudice to the respondent if the application is granted.

The applicant's advocate submitted further that this application has met all the conditions for this court to grant the relief sought in this application. The learned advocate contended that the applicant's delay in this matter is for 9 days only and sufficient reasons for the delay have been stated in

the affidavit in support of the application. In addition to the above the applicant's advocate was of the view that there will not be any prejudice on part of the respondent if this application is granted.

I am alive that an application for extension of time is under the court's discretionary powers. There are no hard and fast rules on the criteria to be considered by the court in granting extension of time, however, the position of the law is that the applicant has to adduce sufficient reason for the delay. The courts have been taking into consideration a number of factors, including length of the delay, reasons for the delay and degree of prejudice to the respondent if the application is granted as submitted by the applicant's advocate. (see the following cases; **International Airline of the United Arab Emirates Vrs Nassor Nassoro, Civil Application No 263 of 2016** (unreported), **Irene Temu Vrs Ngasa M. Dindi, Kinondoni Municipal Counsel and Mohamed Esti Civil Application No.278//17 of 2017**, (unreported) and **Yusufu Same and Hawa Dada Vrs Hadija Yusufu, Civil Appeal No.1 of 2002** (unreported).

In this application there is a delay of nine days. The task of this court is decide whether sufficient reasons have been adduced by the applicant for each day of delay. In his affidavit as well as the submission made before this court, the applicant's advocate has given explanations for the said delay of nine days. As I have mentioned earlier, the main reason for the delay is that he travelled to Arusha to attend the Tanganyika law society Annual conference and General meeting. Copies of the tickets from Dar es Salaam to Arusha and back to Dar es Salaam were attached to the affidavit. I am convinced with the reasons adduced for the delay as deponed in the affidavit in support of the application. I know that the applicant's advocate is a member of the Tanganyika Law Society by virtue of being an advocate and am of a settled opinion that this delay is not inordinate.

Also, I have taken into account the fact that the respondent has not appeared in court despite being served with summons as such it does not appear that the respondent is likely to be prejudiced if this application is granted. Under the circumstances, I hereby grant this application. The applicant is ordered to publish the default judgment within seven days from the day of this order. No order as to costs.

Dated at Dar Es Salaam this 21st day of February, 2019



A handwritten signature in black ink, appearing to read "B.K. PHILLIP".

B.K. PHILLIP

JUDGE.