

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 1 OF 2018**

**REGENT TANZANIA LIMITED ..... PLAINTIFF**

**Versus**

**BG INTERNATIONAL LIMITED..... DEFENDANT**

**Last Order: 15<sup>th</sup> Aug, 2019**

**Date of Ruling: 10<sup>th</sup> Sept, 2019**

**RULING**

**FIKIRINI, J.**

On 15<sup>th</sup> August, 2019 when this matter was called up, the plaintiff through the counsel Mr. Jovison Kagirwa moved the Court under section 95 of the Civil Procedure Code, Cap. 33 R. E. 2002 (the CPC). He sought extension for the life span of speed track, which had expired on 12<sup>th</sup> May, 2019, for 4 (four) months from the date of this ruling. He said the same could not have been made timely because after judge who had a conduct of matter was elevated to the Court of Appeal the matter was left pending awaiting reassignment to a new trial judge.

Mr. Gerald Nangi, the Counsel for the defendant contested the application. He argued that since the request was seeking departure from the scheduling order then section 95 was not the right provision for such request and for that reason this Court had no jurisdiction to grant the application. He also argued that, twice the matter was adjourned at the instance of the plaintiff instead of the taking the initiative to prosecute their case. So it was not correct to say that they could not have prosecuted the case because of waiting for reassignment to a new trial judge.

Responding to that Mr. Kagirwa argued that since the Rule 32 (3) of the High Court (Commercial Division) Procedure Rules, 2012 (the Commercial Court Rules) is a the provision governing the extension of speed track life span, during life of the speed track life span, thus it could not have been invoked at the Court appearance which was scheduled on 23<sup>rd</sup> May, 2019 because by then the speed track life span had already expired on 12<sup>th</sup> May, 2019. Resort to section 95 of the CPC, which conferred the Court with inherent jurisdiction was the refuge.

And that this was based on the fact that between 14<sup>th</sup> November, 2018 and 12<sup>th</sup> May, 2019 there was no Court appearance made and the matter was

not yet reassigned. Fortifying his position on the expiration of speed track life span, he contended that, the Court is not empowered to dismiss or struck out the suit. In support he cited the case of **Al-Karim Shamshudin Habib v Equity Company Ltd & Ano, Commercial Case No. 60 of 2016.**

Giving two accounts as to what made the matter adjourned, it was his submission that the first time was on 23<sup>rd</sup> May, 2019 when the matter was adjourned for the reason that Mr. Ryan was indisposed the fact which was not opposed by the defence counsel at that time and the second time was upon Court directive that the plaintiff has to file formal application to amend witness statement.

A short response from Mr. Nangi on the cited case, that the decision was subjective and not of general principle as the Court at p. 2 stated that each case should be decided on its own facts and also the case did not discuss the powers of the Court as illustrated under section 95 of the CPC. He continued maintaining that this Court has not been properly moved and that there were other Court decisions which departed from the cited decision of **Al-Karim** (supra). He cited cases of **Moto Mabanga v Ophir**

**Energy Pic & 2 Others, Commercial Case No. 185 of 2013 and Louis Dreyfus Commodities (T) Limited v Rubuye Agro-Business Company Limited, Commercial Case No. 147 of 2015.** (Copies were supplied to the Court later).

It is an obvious fact and unfettered principle that each case or application should be decided on its own merits, in the present application likewise, I shall be guided by the principle. The speed track life span in the present case expired on 12<sup>th</sup> May, 2019. None of the parties moved the Court 30 (thirty) days prior to the expiration of time as required under Rule 32 (3) of the Commercial Court Rules. The to be equally shared responsibility, irrespective of what the provision provides is more detrimental to the plaintiff than the Court or the defendant and thence it is expected the plaintiff would keep a keen eye on the progress of his suit, including monitoring the timeframe or speed track life span.

Mr. Nangi's submission that the CPC is only to be resorted when there is a *lacunae*, the submission which I agree to, but he could not address the Court on what should be done in a situation like the one under Rule 32 (3) of the Commercial Court Rules, where the right is limited to the prescribed

time of 10 (ten) to 12 (twelve) months, meaning only one extension of time of the speed track life span can be done, which in this case had expired.

Currently there is no solid position on the issue and all the three cited cases are relevant though each depending on the facts involved. However, in answering as to whether this Court has been properly moved, while Mr. Nangi considers it has not since the provision employed was that of section 95 of the CPC, but Mr. Kagirwa was content that the Court has been properly moved.

It is not in dispute at all that after the expiration of the first 10 (ten) or 12 (twelve) months, Rule 32 (3) of the Commercial Court Rules no longer apply. Similarly the rule as well does not instruct or empower the Court to strike or dismiss the suit on such ground. Aided by the decision of **Al – Karim** (supra) which cited with approval the case of **Tanzania Harbors Authority v Mathew Mtalakule, Civil Appeal No. 46 of 1999**, which illustrated what should happen when the speed track life span has expired, that is not to strike out or dismiss the case, but to order costs against the party applying.

Apart from that, to me the gap experienced under Rule 32 (3) of the Commercial Court Rules is a *lacunae*, which can compel resort to the CPC and in particular sections 93 which deals with enlargement of times or 95 which gives this Court inherent powers. So I would not seriously fault the plaintiff for resorting to the provision. Although the Commercial Court is being governed by its own Rules of procedures, but that does not negate the fact that seeing justice obtained its Court's a paramount undertaking. Therefore the Court despite maintenance and observance of the rules of practice should not ignore, but to carefully weigh the two and when justice is called to triumph it should do so.

The Amendment of the High Court (Commercial Division) Procedure Rules, through GN. No. 107 of 2019, where Rule 32 of the Rules was amended by adding sub-rule (4) to Rule 32 of Commercial Court Rules, which allows the Court's intervention at any time when need be, came at an opportune time. The provision in the Amendment provides that:

***"The Court may, at any time, on its own motion  
extend the life span of the case on such terms as  
it may deem just"*** [Emphasis mine]

On the strength of the amended provision I thus overrule objection raised by Mr. Nangi and *suo motu* proceed to extend the speed track life span for another 4 (four) months from the date of this ruling to wit by 09<sup>th</sup> January, 2020. The application is granted with costs. It is so ordered.



A handwritten signature in black ink, appearing to read "P.S. FIKIRINI", written over a horizontal line.

**P.S.FIKIRINI**

**JUDGE**

**10<sup>th</sup> SEPTEMBER, 2019**