IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 73 OF 2018

(Arising from Miscellaneous Commercial Application No. 146 of 2017 and Commercial Case No. 76 of 2007)

BETWEEN

BADUGU GINNING COMPANY LIMITED.....APPLICANT

VERSUS

SILWANI GALATI MWANTEMBE ***as a Receiver and Manager of Mara oil Mills & Ginnery Limited*****.....1st RESPONDENT**

FEDERAL BANK OF MIDDLE EAST.....2nd RESPONDENT

AZANIA BANCORP LIMITED.....3rd RESPONDENT

TANZANIA ELECTRICAL SUPPLY COMPANY LIMITED.....4th RESPONDENT

Last Order: 11th Dec, 2019

Date of Judgment: 25th Feb, 2020

RULING

FIKIRINI, J.

This is a ruling on application for extension of time to lodge a notice of appeal as well as an extension of time to apply for leave to appeal to the Court of Appeal of Tanzania. The application with costs to be provided for was filed under section 11(1) and section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E 2002 (the AJA). Mr. Mwezi Mhango deponed an affidavit in support of the application while the Ms. Queen Allen filed a counter affidavit in respect of the 1st and 3rd respondents; Mr. Daniel Welwel filed one on behalf of the 2nd respondent and Howa Hiro Msefya the 4th respondent's Principal officer deponed one on behalf.

At the hearing Mr. Vitalis Peter appeared for the applicant; Ms. Nancy Mapunda appeared for the 4th respondent as well as holding brief for Mr. Tarzan K. Mwaiteleke who was for the 1st and 3rd respondents. No one appeared for the 2nd respondent. Counsels adopted the affidavits in support or opposing the application, and the applicant adopted as part of their submission the skeleton arguments filed.

It was Mr. Peter's argument that the application of extension of time to lodge notice of appeal to the Court of appeal of Tanzania, extension of time to apply for leave to appeal, to the Court of appeal and costs of the application be granted

because the delay was not caused by negligence or lack of interest in pursuing the matter. He further submitted that when the matter was fixed for hearing on two successive days namely on 18th and 21st June 2010 the Court dismissed the suit as both Mr Deya Paul Outa and Mr. Mwezi Mhango were absent. An application for restoration was filed on 06th October, 2010 only to be dismissed with costs. A notice of appeal followed on 13th October 2010 and leave to appeal to the Court of Appeal against the decision. The application was also dismissed.

Upon being supplied with the necessary documents a record of appeal was prepared and Civil Appeal No. 91 of 2012 was instituted, however when the appeal was placed before the Court of Appeal, for hearing on 14th February, 2017 it was accordingly struck out for being incompetent. Miscellaneous Application No. 146 of 2017 was filed on 26th May, 2017 but was rejected on 14th February, 2018 for failure to comply with Rule 19 (1) and (2) of the High Court (Commercial Division) Procedure Rules, 2012. Since he was not present in Court he had to go through the ruling before filing the application afresh.

Opposing the application Mr. Tarzan for the 1st and 3rd respondents argued that apart from the fact that nothing has been averred in relation to the 3rd prayer, the applicant has not shown sufficient reason for the delay in filing the application for leave to appeal. The application not being the first as previously Miscellaneous Commercial Application No. 146 of 2017 which was struck out on 14th February,

2018 was filed. After fifty (50) days this application followed without any reasons assigned, besides the counsel admitting that he was not in Court when the ruling was read, which shows that there was no diligence shown in pursuing the matter. Moreover, the applicant has not been able to point out as to when the copy of the ruling was applied and supplied so as to allow the Court to count on the delayed days.

Extending his submission Mr. Tazan submitted that the applicant has not shown sufficient reasons to warrant this Court to exercise its discretion and make it grant the order sought. Likewise, the applicant has not shown or raised any issue which can fit the Court of Appeal consideration and therefore prayed the application be dismissed with costs.

Ms. Mapunda, for the 4th respondent submitted that in order to avoid repetition, she prayed to adopt submission in chief of the learned advocate for the 1st and 3rd respondents.

In rejoinder the applicant controverted that the application before the Court was not omnibus application as averred by the respondents. In support of his submission he cited the case of **Mic (T) Ltd v Minister of Labour of Youth Development and AG, Civil Appeal No. 103 of 2004.** In the decision the Court of Appeal in determining the issue raised on omnibus application at pg. 8 had this to state that:

".....in my opinion the combination of two applications is not bad at law. I know of no law forbid such a cause. Court of law abhors multiplicity of proceedings. Court of Law encourages the opposite."

He thus urged the Court to grant the application and reliefs sought.

The sole issue for determination is whether the applicant has displayed reasonable or sufficient reasons warranting grant of the application.

The Court has been vested with unfettered discretion to grant any relief sought before it, so long as it has jurisdiction and is mindful of exercising such discretion judiciously. While there is no exclusive definition on what amounts to sufficient reason meriting granting of an extension of time through case laws standard has been set. There is a long list of decisions but for the purposes of this application my guidance will be gleaned from **Benedict Mumello v Bank of Tanzania, Civil Appeal No. 12 of 2002** (unreported), in which the Court of Appeal of Tanzania concluded that extension of time is entirely in the discretion of the court and the same can be granted upon sufficient cause for the delay.

Once there is a good cause for the delay, a prudent party may safeguard his interest by applying for extension of time as it was held in the case of **Mrs. Kamiz Abdullah M.D Kermal v the Registrar of Buldings and Miss. Hawa Bayona (1988) T. L. R 199**

In the present application the applicant gave two reasons for the delay: first, that the Miscellaneous Commercial Application No. 146 of 2017 was rejected on 14th February 2018, for the reason that pleadings did not conform to Rule 19 (1) and (2) of the Rules, and second, when the ruling was read on 14th February 2018 he was not present in Court.

I wish to start with the first reason, by stating that advocates are presumed to know the law and procedures applicable including the Commercial Court Rules. Failure to comply with the requirement of the law amounts to lack of diligence which cannot constitute as sufficient reason. This can rather be interpreted to be negligence which is caused by failure to take into consideration all necessary and required legal steps. **See: Umoja Garage v National Bank of Commerce (1997) T.L.R 109.**

The reason advanced is not merited at all. The applicant through his counsel ought to have known and fulfilled the requirement. The reason advanced flops to constitute as sufficient reason in considering an application for extension of time.

The second reason advanced was the absence of the advocate in the Court room when the ruling was pronounced. This is not only immaterial but also insufficient because no reasons were put forward as to why the advocate was not present in Court. Even if the advocate's absence was for a good reason, still he had a room of getting a copy of the ruling at the earliest opportune time, something I suspect he

did not do. This is concluded due to the applicant's failure to state when the copy of the ruling was applied and supplied to allow the Court to compute for the delayed days. Failure to do so, in my view constituted negligence. In the case of **Issack Sebegele v Tanzania Portland Cement Co. Limited, Civil Application No. 25 of 2002,** the Court stated that:

> *"negligence on the party of the applicant seeking extension of time does not constitute sufficient cause to warrant extension o time."*

Exercising discretion vested upon the Court and underscoring the stance by borrowing from the case **Berry v British Transport Commission (1962)1QB 306,** in that case the decision stressed that Court's discretionary powers must be exercised according to the rules of the reasons and justice not according to the private opinion. The account that the advocate was not in Court when the ruling was delivered is not a sufficient reason at all. As stated earlier even if, I take that as a valid reason yet it will not suffice as none of the delayed days were accounted for nor the date when the copy was applied or supplied given.

The length of delay is actually not an issue but what is important is the reason for the delay. I thus agree with Mr. Tarzan submission that the applicant has not shown any good reasons for the delay.

All these considered together leads to the conclusion that the application is devoid of merit and thus dismissed with costs. It is so ordered.

P.S FIKIRINI

JUDGE

25th FEBRUARY, 2020