

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT ARUSHA

MISCELLANEOUS COMMERCIAL APPLICATION NO. 10 OF 2019

BETWEEN

M/S MOSHI URBAN WATER SUPPLY

AND SANITATION AUTHORITY.....APPLICANT

Versus

M/S SECULARMS (T) LIMITED.....RESPONDENT

Last Order: 04th Nov, 2019

Date of Ruling: 11th Feb, 2020

RULING

FIKIRINI, J.

The applicant pursuant to chamber summons filed an application for extension of time within which to file a written statement of defence. The application has been brought under Rule 20 (2) of the High Court (Commercial Division) Procedure Rules, 2012 (the Rules). Supporting the application are the affidavits of Mr. Laurian Kessy –the applicant’s legal officer and Ms. Lydia Thomas – State Attorney employed in the office of the Solicitor General based in Dar Es Salaam.

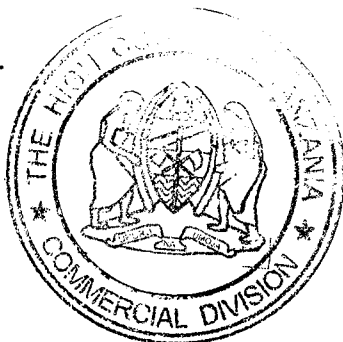
On 04th November, 2019, Mr. Baraka Nyambita –State Attorney assisted by Ms. Neisha Shao also State Attorney and accompanied by Mr. Laurian Kessy – applicant’s legal officer entered appearance on behalf of the applicant, while Mr. Yusuf Mlekwa entered appearance holding brief of Mr. Gwakisa Sambo for the respondent. During the proceedings, Mr. Nyambita prayed to be allowed to serve the respondent with the application for extension of time filed, the prayer which was not objected by Mr. Mlekwa. After the service, the Court ordered the respondent if not objecting to the application to notify the Court so as to give way for the applicant to be allowed and ordered to file their written statement of defence within 21 (twenty one) days. In the event the respondent intended to contest the application then she should file counter affidavit within 14 (fourteen) days and the applicant to file reply if any upon service.

Each party was given 14 (fourteen) days to file written submissions from the date of reply to the counter affidavit. Up until I am about to compose this ruling neither the applicant nor the respondent has filed written submissions in support of the positions. In actual fact the respondent has not even filed counter affidavit contesting the application. The application therefore stands unchallenged so far. I took trouble of going through the affidavits deponed in support of the application for an extension of time, and I find myself in support of the application for two reasons: one, for the interest of justice a party should be given an opportunity to

state their case before any adverse decision is made against that party. Two, the letter dated 09th October, 2019 from the Moshi Urban Water Supply and Sanitation Authority related to Commercial Case No. 5 of 2018 filed before the High Court- Commercial Division reached the office of the Solicitor General on 15th October, 2019 as exhibited by receipt stamp on annexure OSG-1 which was annexed to the affidavit of Ms. Lydia Thomas. Through the said letter the office of the Solicitor General was informed of the existence of the Commercial Case No. 5 of 2018. The officer of the Solicitor General entered appearance for the first time on 04th November, 2019 but by then this application has already been preferred.

Under paragraph 5, the deponent Ms. Thomas stated the reasons as to why she could not file the written statement of defence timely and hence this application, the reason which besides not being controverted, I opine to be sound. And it is on the strength of the two pointed out reasons, I find the application deserve granting.

I thus, proceed to grant the application for extension of time to file written statement of defence within 14 (fourteen) days from the date of this ruling. It is so ordered.



P.S.FIKIRINI

JUDGE

11th FEBRUARY, 2020