

**IN THE HIGH COURT OF THE UNITED
REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM**

MISC. APPLICATION NO. 171 OF 2020

*Originating from Commercial Case No.49 of 2018, the **Registered Trustees of Tanzania Legion and Clubs v Lavender Villas Limited**, delivered by Hon.Sehel, J (as she then was) on 17th August 2018).*

LAVENDER VILLAS LIMITED..... APPLICANT

VERSUS

**REGISTERED TRUSTEES OF TANZANIA
LEGION AND CLUBS.....RESPONDENT**

RULING

Date of Last order: 09/02/2021
Delivery of Ruling: 12/03/2021

NANGELA, J:.,

On 25th November 2020, the Applicant herein filed an application in this Court by way of a Chamber Summons supported by two affidavits of one, Stella Josiah Manongi and Mohamed Iqbal Haji. The application, was brought under section 14 (1) of the Law of Limitation Act, Cap.89 R.E.2019, section 95 of the Civil Procedure Code, Cap. 33 R.E 2019, and any other enabling provisions of the laws.

In its application, the Applicant seeks for the following orders of the Court:

- 1. That, this Honourable Court be pleased to extend time to the Applicant for the latter to be able to file an application to set aside default judgement entered by the Court.*
- 2. Costs of this application be provided for.*
- 3. Any other or further orders which this Court may deem fit to grant.*

On 09th February 2021, the parties appeared before me for the hearing of the application. The Applicant enjoyed the services of Ms Yusta Kibuga, learned Advocate, while Mr Joseph Msengezi, also a learned Advocate, appeared for the Respondent.

Mr Msengezi was quick to inform this Court that, the Respondent was not interested in opposing the application. That being said, Ms Kibuga asked this Court to grant it, taking into account the reasons disclosed in the affidavit supporting the Chamber Summons.

She contended that, at the crux of the matter is the fact that the Applicant was not made aware of

the hearing of the **Commercial Case No.49 of 2018**, as no summons was served on the Applicant. For that matter, she pressed on the Court to grant the prayers and have the judgement set aside.

Before I proceed further in this ruling, let me point out that, the mere fact that an application has not been opposed, is not a free ticket that would allow the Court to grant that application. Where an application goes unopposed, the Court has a duty to scrutinise it as well in order to satisfy itself as to whether the exercise of its discretion to grant such application is warranted or not.

As regards the above noted principle, see the case of **Dr. Reginald Abraham Mengi and KM Prospecting Limited v Muganyizi J. Lutagwaba and 2 Others, Consolidated Misc. Applications No. 198 of 2016 and 214 Of 2016 (unreported)**.

In view of the above principle, I have considered the reasons disclosed in the two affidavits supporting the Chamber Summons. I have also taken the liberty of revisiting the case file from which this application arises and, in doing so; I have noted the said affidavit signed by one **Mathis Chikala** alleging proof of service proof of service,

and which was no doubt that this affidavit was the basis for the issuance of the default judgement by this Court.

Basically, the affidavit of Mr Chikala indicates that, at the time of hearing of the initial case from which this application arises, service was made to **the Manager of the Applicant** in the presence of **Naila Abdul** and **Ahmed Mwita**.

However, in his affidavit in support of the Applicant's application, the Applicant's Managing Director, **Mr Mohamed Iqbal Haji**, has denied any knowledge of the service, and, furthermore, has denounced the two witnesses alleged to have witnessed the service of the summons. Mr Haji averred that, **Naila Abdul** and **Ahmed Mwita** are unknown to the Applicant and are not employees of the Applicant.

According to section 14 (1) of the Law of Limitation Act, Cap.89 R.E 2019, the granting of an extension of time to do or perform an act outside the prescribed time, is a discretionary act of the Court. The discretion to do so can only be exercised where there are sufficient reasons to do so.

Section 14.-(1) of the Law of Limitation Act provides as follows:

“Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.”

As it might be noted, the above provision gives the court discretionary powers to allow or reject an application based on that provision, and, if the application is to succeed the Applicant must demonstrate reasonable or sufficient cause. Exercise of judicial discretion, however, is not an issue guided by hard and fast rules but rather the principles of justice, equity and common sense.

That understanding is well laid down in a number of decisions of the Court of Appeal, such as the cases of **Tanga Cement Company Limited v. Jumanne O. Massanga and Amos A. Mwalwanda, Civil Application No.6 of 2001 (both Unreported -CAT)**); as well as **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's**

Christian Association of Tanzania, Civil Application No.2 of 2010, (both Unreported).

Essentially, looking at the applicant's Application before me as a whole, I find that, what is stated by the Applicant as the basic reason for this application is, that, the Applicant's was condemned unheard since, no summons was served upon the Applicant and, that, the case was filed by an unauthorised person. Breach of natural justice is an illegality that cannot be condoned and must be addressed by the court.

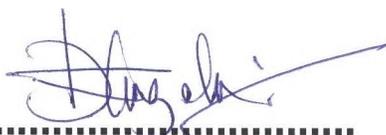
It is clear, in our jurisprudence, that, when an illegality is pleaded as a ground why an extension of time is being sought to challenge a decision, such a factor alone entitles a Court to grant the particular application. See, for that matter the cases of **Habib Salim v Hussein Bafagi Civil Appl. No. 52 of 2009, Principal Secretary, Ministry of Defence and National Service v Devram Valambhia [1992] TLR 182 and VIP Engineering and Marketing Limited and Three Others v Citibank Tanzania Limited, Consolidated Civil Reference No. 6, 7 and 8 of 2006 CA (Unreported)**).

However, an illegality must, in the first place, been pleaded in the pleadings filed in the Court. I have looked at the documents filed in this Court by the Applicant and I am convinced, as I look at the affidavits filed in this Court, that, illegality is the basis of what the Applicant seems to plead in this Court, i.e., that the Applicant was wrongly denied the opportunity to defend the case owing to non-service of the summons to the Applicant, thus infringing its right to be heard.

In the upshot, the application for extension of time is hereby granted. The Applicant is ordered to file the requisite application within 21 days from the date of this ruling. Further, given the circumstances of this case, I find it wise that each party should bear its own costs.

It is so ordered.

DATED ON THIS 12TH MARCH 2021



.....
DEO JOHN NANGELA
JUDGE,
High Court of the United Republic of Tanzania
(Commercial Division)
12 / 03 / 2021

Ruling delivered on this 12th day of March 2021, in the Presence of Ms Yusta Kabuga, Learned Advocate for the Applicant and Mr. Joseph Msengezi, Advocate for the Respondent.



A handwritten signature in blue ink, appearing to read "Deo John Nangela". The signature is fluid and cursive, written over a horizontal dotted line.

DEO JOHN NANGELA
JUDGE,
High Court of the United Republic of Tanzania
(Commercial Division)
12 / 03 / 2021