

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISC. COMMERCIAL CAUSE NO. 127 OF 2022**

**MASHREQ INTERTRATDE COMPANY LIMITE.....APPLICANT**

**VERSUS**

**JOSEPH SLYVESTER MARIANGWE ..... RESPONDENT**

**Date of Last Order:08/09/2022**

**Date of Judgement: 30/09/2022**

**RULING**

**MAGOIGA, J.**

The applicant, MASHREQ INTERTRADE COMPANY LIMITED by chamber summons made under Rule 23 (1) of the High Court (Commercial Division) Procedure Rules and Order VIII Rule 15 (1) of the CPC [R.E.2019] supported by the affidavit of Mr. Mohamed Mohamed Maliki is moving this court for an order to set aside its default judgement and decree delivered on 15<sup>th</sup> July 2022 and restore the suit for hearing inter parties and any other relief the court may deem fit to grant.



Upon served with the chamber summons and affidavit, the respondent filed counter affidavit stating the reasons why this application should not be granted.

The facts of this application are simple and straightforward. The respondent instituted a Commercial case No.142 of 2021 against the applicant and the applicant was served on 22<sup>nd</sup> December, 2021 with summons and plaint with instruction to file written statement of defence within 21 days. Unfortunately, the written statement of defence was filed on 17<sup>th</sup> February, 2022, out of time without court's leave. It was met with objection and was struck out for being filed out of time. Her attempt for extension of time was also fruitless. Consequently, a default judgement was entered against her on 15/07/2022. The applicant has made this application for an order to set aside the default judgement, hence, this ruling.

The applicant is represented by Mr. Mashiku Sabasaba, learned advocate, whereas the respondent, is represented by Ms.Jackline Rweyengeza, learned advocate.

The learned advocates for parties filed skeleton arguments and urged this court to consider them for the determination of this application.



Mr. Sabasaba argued that, according to affidavit and written skeleton arguments, the only reason advanced is advocate's negligence who was instructed to prosecute the matter. In support of his position cited the case of GHANIA J. KAMBI vs. SHEDRACK RUBEN NGAMBI, MISC. APPLICATION NO. 692 OF 2018 DSM (HC) (unreported) in which it was held that no party to civil litigation should be punished for an error committed by the advocates.

On that note, prayed that this court be pleased to set aside the default judgement and restore the suit to proceed inter parties.

On the other hand, Ms. Rweyongeza argued that no plausible reason has been given by the applicant who failed to file written statement of defence in time as prescribed by law. According to Ms. Rweyongeza, the medical shit was prepared to salvage this situation because it was prepared after the defence was struck out. Further, the learned advocate for the respondent denied for Salim Omar Salim appearing in the suit and the defence was filed by Fatuma Kazimoto quite as opposed that the defence was filed by Salim Omar Salim. Going by the law, the learned advocate for respondent showed that there is nothing on record to fault the default judgement which was entered after complying with the law.



No rejoinder was filed nor oral arguments advanced and this marked the end of hearing of this application.

Having dispassionately considered the affidavit and written skeleton arguments for and against this application, with due respect to the applicant, this application is akin to fail. I will explain.

**One**, no dispute that the applicant was served on 22<sup>nd</sup> December, 2021 but do not tell the court when he instructed Advocate Fatuma Kazimoto to file defence nor tell the court as to why he did not file the defence within 21 days because all paragraph are silent on when he exactly instructed Ms. Kazimoto. **Two**, his narration of the events from 4<sup>th</sup> January, 2022 is not supported by record because the defence that was filed was drawn and filed by advocate Fatuma Kazimoto and not Salim Omar Salim advocate as stated in the affidavit. **Three**, the applicant, has herself to blame because she denied herself the right to be heard for her failure to file defence within a prescribed time. Therefore, the way she conducted herself and her advocates is clear indication of negligence of the highest order that gauged against the interest of justice, I find no plausible reasons to disturb the judgement and decree of for the respondent and in the vein a declined this application.



On the totality of the above reasons, this application must be and is hereby dismissed for want of merits with costs.

It is so ordered.

Dated at Dar es Salaam this 30<sup>th</sup> September, 2022.



A handwritten signature in black ink, appearing to be "S. M. Magoiga". The signature is written in a cursive style with a long horizontal stroke extending to the right.

**S. M. MAGOIGA**

**JUDGE**

**30/09/2022**