

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISC COMMERCIAL APPLICATION NO.178 OF 2022**

**(Arising from Commercial Case No.129 of 2020)**

**FIRST NATIONAL BANK TANZANIA LIMITED.....APPLICANT**

**VERSUS**

**PETROLUX SERVICE STATIONS LIMITED ..... RESPONDENT**

**RULING**

*Date of Last Order: 02/11/2022.*

*Date of Ruling: 11/11/2022.*

**AGATHO, J.:**

The Applicant armed with certificate of urgency is moving the court for an order of extension of time to publish a copy of default judgement issued in Commercial Case No.129 of 2020. The application was brought by way of chamber summons under the provisions of section 95 of the Civil Procedure Code, [Cap 33 R. E. 2019] seeking for following orders:

1. That this honourable court may be pleased to extend time upon which the Applicant should advertise in the newspaper the default judgment delivered by this honourable court in Commercial Case No. 129 of 2020 in favour of the Applicant.
2. Any other reliefs as this court shall deem fit and just to grant.

A brief background of the application is that the Applicant sometimes in 2015 and 2016 made available to the Respondent credit facility for vehicle financing and business loan agreement to the tune of TZS.1,036,500,000. The said credit was to be paid within 36 months, unfortunately the Respondent in 2018 was unable to repay the loan as agreed. This state of affair culminated into institution of Commercial Case No 129 of 2020. Efforts by the Applicant to serve the Respondent by normal means was in vain. As such on 14/08/2021 the Respondent was served through substituted means via publication in the newspapers: Daily News and Habari Leo respectively. When the matter was called for orders on 06/05/2022, the learned advocate for the Plaintiff/Applicant prayed that he be allowed to proceed under the provisions of Rule 22(1) of the High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N. 107 of 2019. In the circumstances, his prayer was granted.

It is against this background, this Court on strength of such proof of service, granted the Plaintiff's prayer to prove her case by filing Form number 1 accompanied with affidavit in proof of the claim. And on 13/05/2022 the court delivered the default judgement in Commercial Case No.129 of 2020. It also ordered the Applicant (then Plaintiff) to advertise the copy of default judgement in the newspaper within 10 days from the date of pronouncement of the said default judgement as per Rule 22(2) (a) and (b) of the High court (Commercial Division) Procedural Rules (supra). However, the Applicant failed to publish the default decree within prescribed time. It is due to that delay that the Applicant

has preferred this application for extension of time to allow her to publish the default judgement in Commercial case No.129 of 2020, hence, this ruling.

The application was initiated by chamber summons supported by an affidavit deponed by Mr. Augustino E. Ndomba, learned advocate for the Applicant. He stated the reasons why this application should be granted and prayed the same to be adopted to form part of his submission. Submitting for the Applicant Mr. Augustino Ndomba, Advocate stated that the reason for delay to publish the default judgement before expiration of the given 10 days was sickness. That rendered him unable to make follow-ups and advertise the decree in the newspaper. This application was not contested as the Respondent did not file any counter affidavit

It is worth noting that granting of an application for extension of time is a judicial discretion to be exercised judiciously. There are no hard and fast rules on the criteria to be considered by the court in granting extension of time. But the Applicant has to adduce sufficient reasons for the delay and always the aim must be to achieve real and substantial justice between the parties and implication of the issue to parties. The case of **Lyamuya Construction Company Ltd Vs Board of registered trustee of Young Women's Christian Association of Tanzania, Civil Appeal No.2 of 2010 (CAT)** and the case of **Regional Manager Tanroads Kagera V. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007, CAT, (unreported)** underscore the points for consideration very amply.

Having that in mind and back to instant application, the issue for determination is whether the Applicant has advanced sufficient reasons/cause for this court to exercise its discretion and grant the application even when the application was not contested. From the outset and with due respect to the Applicant's learned advocate, the reasons advanced for grant of extension of time to publish default judgement are unjustifiable and do not warrant the grant of the application. The Applicant has mentioned sickness as one of the grounds for extension of time. I am aware that sickness is a ground for extension of time. However, the Applicant was duty bound to prove that it was indeed the sickness that caused the delay by providing concrete evidence. A mere mentioning of it does not do any favour. To the dismay of the Court in this application no medical certificate or bus tickets to and from locality of a purported witchdoctor were tendered to substantiate that indeed the Advocate for Applicant was sick, and his sickness caused him to delay in publishing the decree. I am firm that failure to submit the evidence discredits the reasons advanced.

More so the learned counsel for Applicant submitted that, there is no provision in Commercial Court Rules (supra) to govern the application at hand as a such the application was brought under section 95 of the Civil Procedure Code, [ Cap 33 R: E. 2019]. I agree with the learned advocate for Applicant that Commercial Court Rules do not have the provision to govern the instant application. But the said Section 95 of the Civil Procedure Code [Cap 33 R.E. 2019] in which the learned advocate moved the Court is not a proper provision

as such the court was not properly moved because Section 93 Civil Procedure Code [Cap 33 R.E. 2019] is in our view the proper provision for enlargement of time which originally was fixed. For easy reference and its applicability Section 93 provides that: -

Where any period is fixed or granted by the court for doing any act prescribed or allowed by this code, the court may in its discretion, from time to time enlarge such period even though the period originally fixed or granted may have expired. (Emphasis is mine)

From literal reading of the above provision, it allows any party to the proceedings moving the court to enlarge time that was originally fixed despite lapse of time earlier fixed. Therefore, since the period for advertising the default judgement was prescribed within 10 days then Section 95 of the Civil Procedure Code was not a proper provision to move the Court in the instant application. Rule 22 (2)(a) and (b) of the HCT (Commercial Division) Procedure Rules requires the judgment creditor (the Applicant) to publish a copy of the decree within a period of ten (10) days from the date of delivering the default judgment. It is conspicuous that the submission by the Applicant's counsel that the time for executing the decree is 12 years as per item 20 of part III of the schedule to the Law of Limitation Act [Cap 89 R.E. 2019] while that may be true but in the context of the present application

that is misleading. And that statement was made from the bar and unfounded in the affidavit in support of the application. I am saying so because the point at issue is the Applicant's disregard to Court order to publish the decree within the time prescribed. Rule 22(2)(a) and (b) of the Commercial Court Procedural Rules of 2012 GN 249 and 250 of 2012 as amended in 2019 is clear that it must be published within 10 days from the date of pronouncement of the judgment. I thus dismiss the submission by the counsel for the Applicant for lacking merit and being misleading.

However, I have as well gone further in the circumstance of this application to consider the interest of justice alongside the conduct of learned advocate for Applicant. It is worth noting that the learned advocate for the Applicant was not diligent and the delay in publishing the default judgement was caused by negligence on his part. Nevertheless, and as it was rightly held by this Court in **Tanzania Ports Authority v Managing Director MUAPI Limited and Director GRAVIMPORT – SPRI, Misc. Commercial Application No. 124 of 2021, HCT Commercial Division at Dar salaam** (unreported) at pages 2-3 the Advocate's sloppiness and negligence should not deny the Applicant to benefit from his decree. Therefore, for the interest of justice, I grant an extension of time to publish the default judgement dated 13/02/2022 within 10 days in two newspapers of wide circulation and after the period of 21 days from the date of expiry of the said

period of ten (10) days, the decree holder will be at liberty to execute her decree.

It's so ordered.

**DATED at DAR ES SALAAM this 11<sup>th</sup> Day of November 2022.**



  
**U. J. AGATHO**

**JUDGE**

**11/11/2022**

**Court:** the ruling is delivered on this 11<sup>th</sup> day of November 2022 in the presence of Augustino Ndomba Advocate for the Applicant but in the absence of the Respondent.



  
**U. J. AGATHO**

**JUDGE**

**11/11/2022**