

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 173 OF 2022

(Arising from Miscellaneous Commercial Cause No. 17 of 2014)

KILIMANJARO BLANKET CORPORATION LIMITED... APPLICANT

VERSUS

FLAMINGO AUCTION MART CO. LTD.....1ST RESPONDENT

DIAMOND TRUST BANK (T) LTD 2ND RESPONDENT

POLYTEX AFRICA LIMITED 3RD RESPONDENT

RULING

A.A. MBAGWA, J.

This is an application for extension of time within which to file a notice of appeal. The applicant herein, KILIMANJARO BLANKET CORPORATION LIMITED has, by way of chamber summons, brought this application under section 14(1) of the Law of Limitation Act, praying before this Honorable Court for the following orders: -

1. That this Honorable Court be pleased to extend time for the applicant to file a fresh notice of appeal.
2. That costs of the application to follow the event.
3. Any other relief(s) this Court may deem equitable and just to grant.



The application is backed up by an affidavit sworn by Abduel Gilead Kitururu, the applicant's learned counsel. On the contrary, the application was strongly resisted by the respondents through counter affidavits of Victoria Lupembe, the 2nd respondent's Principal Officer on behalf of the 2nd respondent and Elisa Abel Msuya, the 3rd respondent's counsel on behalf of the 3rd respondent. The 1st respondent, Flamingo Auction Mart Co. LTD did not file counter affidavit nor did it appear during hearing of the application.

The brief background of the matter as depicted from the depositions may be summarized as follows; The 2nd respondent, Diamond Trust Bank (T) Limited through **Commercial Case No. 64 of 2013** successfully sued the applicant, KILIMANJARO BLANKET CORPORATION LIMITED along with others for breach of loan contract. Thereafter the 2nd respondent executed its decree by sale of the applicant's property through public auction. The sale by public auction was conducted on 24th January, 2014.

Aggrieved by the sale of its property, the applicant instituted Misc. Commercial Cause No. 17 of 2014 to challenge the sale but the same was finally dismissed by this court (Makaramba J) for want of merits. Dissatisfied with the dismissal order, the applicant appealed to the Court of Appeal via Civil Appeal No. 108 of 2016. However, when the appeal was called on for hearing on 25th March, 2022, the applicant prayed to

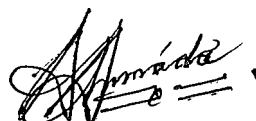
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withdraw the appeal due to absence of a letter from the Deputy Registrar informing her of the availability of the documents for collection.

As the applicant is still determined to challenge the decision of this court in Misc. Commercial Cause No. 17 of 2014, she has brought the instant application to seek extension of time in order to restart the appeal process.

Mr. Kitururu, in his affidavit, states that he wrote a letter to request for the ruling and drawn order and served it to the Court of Appeal on 13th April, 2022 but the requested documents were not obtained until on 28th June, 2022. He continued that no sooner had the drawn order and ruling been obtained than he fell sick. As such, he could not bring this application immediately. He stated that the illness continued until 27th September, 2022 when his condition started to improve. Kitururu contended that the matter could not be attended by his partners in the office because he fell sick before he re-assigned it to another officer. He further averred that the ruling in Misc. Commercial Cause No.17 of 2014 which is sought to be challenged is tainted with illegalities hence a need to approach the Court of Appeal. In the end, the applicant prayed this court to allow the application.

On the adversary, the 2nd respondent contested the application through an affidavit of Victoria Lupembe. She contended that the applicant did not



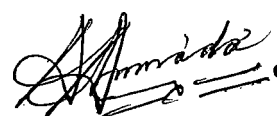
account for nineteen (19) days of delay from 25th March, 2022 when the matter was withdrawn to 13th April, 2022 when he wrote a letter to the Deputy Registrar, Court of Appeal requesting for ruling and drawn order. In addition, Ms. Lupembe laments that the applicant has been negligent in prosecuting its case.

Furthermore, Mr. Abel Msuya deponed that the applicant has been negligent in prosecuting his case. He added that the applicant did not account for nineteen (19) days which he delayed in applying for ruling and drawn order. As such, he has prayed the court to dismiss the application.

When the matter was scheduled for hearing, this court, upon a prayer by the parties, ordered the application to be disposed of by way of written submissions. I commend the counsel of both parties for timely filed submissions.

I have keenly gone through both depositions and the rival submissions filed by the parties. The relevant issue for determination of this application is one namely, whether the applicant has demonstrated sufficient cause to warrant extension of time.

The applicant has stated the reasons which led her to withdraw Civil Appeal No. 108 of 2016. She also contended that the decision which is sought to be challenged is tainted with illegalities. However, the applicant

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has not pointed out the alleged illegalities in the ruling. In contrast, the respondents strongly opposed the application stating that the applicant has been negligent in prosecuting its case. The respondents, in essence, submitted that the applicant has not demonstrated sufficient cause for this court to exercise its discretion of extending time.

It is common cause that there is no fast and hard rule as to what constitutes sufficient cause for purpose of extension of time. The position is that a sufficient cause should be determined upon consideration of all the circumstances obtaining in a particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar Es Salaam. The circumstances which are often considered by the court include length of delay involved, illegality, diligence, reasons for delay, the degree of prejudice, if any, that each party is likely to suffer, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National**

Housing Corporation, Civil Application No. 372 of 2018, CAT at Dar Es Salaam.

I have dispassionately considered the above outlined circumstances vis a vis the facts of the application at hand. One of the grounds which the applicant has raised is illegality in the decision (ruling) in Misc. Commercial Cause No. 17 of 2014. I am alive to the fact that this court is not enjoined to go into merits of the alleged illegality because that falls within the exclusive domain of the appellate court. However, the applicant was duly bound to satisfy this court that the alleged illegalities are apparent on the face of record. I have painstakingly looked at the decision under attack but I could not see apparent illegalities in it. In the case of **Moto Matiko Mabanga vs Ophir Energy PLC and 2 others**, Civil Application No. 463/01 of 2017, CAT at Dar es Salaam, it was held that for one to rely on the ground of illegality, it should not require long drawn argument or process rather the alleged error should be apparent on the face of record. Contrary to the established principle, in this case, the illegality, if any, requires a long-drawn process for one to appreciate it. As such, the ground of illegality fails to meet the test required and is therefore dismissed.

Besides, the applicant has exhibited high degree of negligence. When the deponent, Kitiruru allegedly fell sick, there was no follow up from the

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applicant to have the matter re-assigned to another attorney. The argument that the application is belated due to Mr. Kitururu's sickness is unmaintainable. As stated by Kitururu himself, he was not alone in the office therefore even if he truly fell sick the other partners in the office were supposed to pursue the application during his sickness. Had the applicant been diligent in pursuing its matter, this application would not have been inordinately delayed. It would have been filed immediately after 25th March 2022.


Since the applicant was negligent in pursuing this matter and considering that the applicant failed to establish illegality in the decision sought to be impugned, I am inclined to hold that the applicant has failed to demonstrate sufficient cause.

In the event, I firmly hold that the application is without merits. Consequently, I hereby dismiss it with costs.

It is so ordered.

Dated at Dar Es Salaam this 30th of May, 2023.




A. A. MBAGWA
JUDGE
30/05/2023