

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 205 OF 2022

(Arising from Commercial Case No. 54 of 2018)

QUALITY GROUP LIMITED.....APPLICANT

VERSUS

NATIONAL BANK OF COMMERCE LIMITED.....RESPONDENT

Date of last order: 20/02/2022

Date of ruling: 13/03/2023

RULING

A.A. MBAGWA, J.

The applicant herein, Quality Group Limited, by way of chamber summons, filed this application under section 14(1) of the Law of Limitation Act [Cap 89 R.E 2019] and section 95 of the Civil Procedure Code [Cap 33 R.E 2019] praying this honorable court for the following orders: -

1. This honorable court be pleased to grant extension of time within which the applicant can file an application to set aside the judgement and decree in Commercial Case No.54 of 2018.
2. Costs of this application.



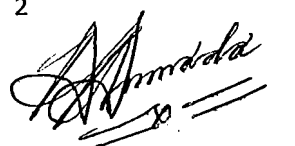
3. Any other reliefs this honorable court will deem fit and just to grant.

The application was supported by an affidavit sworn by Eliya Rioba. Upon service, the respondent vehemently contested the application by filing a counter affidavit sworn by Desmond Malyi in which he refuted the grounds for extension of time stated in the applicant's affidavit.


The applicant states that this application emanates from Commercial Case No.54 of 2018 wherein the applicant was the defendant and the respondent was the plaintiff. In the said case i.e., Commercial Case No.54 of 2018 the summary judgement was entered in favour of the respondent herein through a summary suit procedure. The applicant contends that the judgment is tainted with illegalities in that the court rendered summary judgment against guarantors contrary to the law. As such, the applicant filed the present application seeking the court to grant extension for the applicant to file an application to set aside the summary judgment in Commercial Case No. 54 of 2018.

At the hearing of this application, the applicant enjoyed the services of Eliya Rioba, learned advocate whereas the respondent had representation of John Laswai, learned advocate.

Having adopted the affidavit, the applicant's counsel proceeded to submit that under paragraph 8 of the affidavit in support of application it is clearly



stated that the application is based on illegality. He pointed out two issues namely, **one**, that there was non-compliance of section 127 of the Land Act which requires the mortgagee to serve the mortgagor with a notice of default. The counsel lamented that this was not done prior to the institution of Commercial Case No. 54 of 2018. Further, the applicant's counsel told the court that under paragraph 13 of the plaint it is indicated that the default notice was issued but not served to the applicant. **Two**, the applicant's counsel faulted the trial judge in Commercial Case No. 54 of 2018 for entering summary judgment against the guarantors contrary to the legal requirements. The counsel explained that under paragraph 9 of the plaint, it was clear that **Kanizi Manji and Yusuf Manji** were joined as guarantors in the summary suit but they were denied their right to be heard as the application for leave to appear and defend the case was refused. The counsel clarified that joining the guarantors was contrary to the law. He cited the case of **Prime Catch (Exports) Limited and 4 others vs. Diamond Trust Bank Tanzania Limited**, Civil Appeal No. 273 of 2019, CAT at Dar Es Salaam to support his assertion. The counsel told the court that illegality is itself a sufficient reason to grant extension of time as held in the case of **Hassan Ramadhani vs the Republic**, Criminal Appeal No. 106 of 2018, CAT at Tabora at page 6.

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He thus prayed the court, on the grounds of illegality, to grant the extension.

Upon probe by the court on what prevented the applicant from filing the application since 2018 when the impugned decision was delivered until November, 2022 when this application was filed, the learned advocate replied that the applicant had challenges which caused its principal officer to run away from the country.

In contrast, the respondent's counsel submitted that the application had no merits. He lamented that there is no good reason as to why the applicant stayed for four years without filing the application. He said that the inordinate delay offends the provision of section 14(1) of the Law of Limitation Act.

The learned advocate submitted further that failure by the applicant to provide reasons in the affidavit as to why she failed to take action within time defeats the application. He continued that the case of **Hassan Ramadhani vs. the Republic** (supra) cited by the applicant's counsel is distinguishable because it does not entitle a party to overstay without assigning sufficient reasons.

Furthermore, the counsel argued that that there is no illegality in the said decision. With regard to the right to be heard, Mr. John Laswai opined

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that the guarantors were given the right to be heard as they filed application to enter appearance and defend their case but the same was struck out.

In fine, the counsel concluded that the application is without merits hence it should be dismissed with costs as it has been filed in order to defeat the execution process which had been commenced by the respondent bank, the decree holder in Commercial Case No. 54 of 2018. He explained that the respondent filed execution application on 16th August, 2022 before the instant application was filed in November, 2022.

In rejoinder, applicant's counsel submitted that applicant was not aware of the said application for execution as she came to know about it through the counter affidavit. He insisted that the cited authority of **Hassan Ramadhani vs. the Republic** (supra) is relevant.

Having heard the rival submissions made by the counsel for both sides, I have observed that there is no dispute that this application results from summary judgement and decree in Commercial Case No.54 of 2018. Now the applicant wants the court to extend time within which to file an application for setting aside the summary judgment.



This being an application for extension of time, the only issue for consideration is whether the applicant has demonstrated sufficient cause to warrant extension of time.

As hinted above, the applicant solely relies on the illegality of the decision sought to be challenged. The applicant has contended that the summary judgment was entered against the guarantors which is against the law as it denied them the right to be heard. The applicant's counsel cited the decision of the Court of Appeal in **Prime Catch (Exports) Limited and 4 others** (supra) to support his contention.

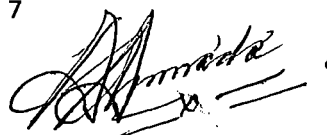
It is now a settled law that there is no hard and fast rule as to what constitutes sufficient reasons for grant of extension of time. Rather, sufficient causes are determined by reference to all the circumstances of each particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar Es Salaam.

Thus, in determination of good cause, courts, quite often, have been taking into account various factors including but not limited to length of delay involved, reasons for delay, the degree of prejudice, if any, that each party is likely to suffer, the conduct of the parties, involvement of point of law of sufficient importance and the need to balance the interests

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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. 372/01 of 2018, CAT at Dar Es Salaam.

In the instant application, it is common cause that the judgment sought to be challenged was delivered on 26th November, 2018. It is also undisputed that there is nothing in the affidavit of Eliya Rioba to account for the inordinate delay. Further, according to annexure QGL1 (the proceedings), the applicant was aware of Commercial Case No. 54 of 2018 because the applicant and other defendants applied for leave to appear and defend the suit but the application was struck out. It is also in the respondent's affidavit that the respondent filed an application for execution on 16th August, 2022 as such, the respondent contends that the present application is calculated to defeat the execution process which the respondent has commenced.

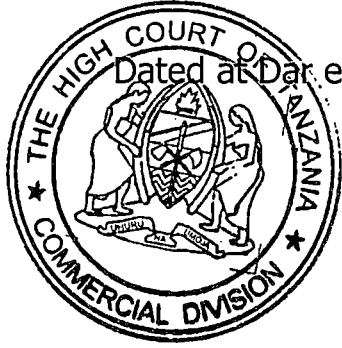
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Upon considering all the circumstances obtaining in this matter, I am inclined to hold that the applicant's inordinate delay in bringing this application is unexplainable. Moreso, it is common cause, that the applicant and others (guarantors) who are not parties to this application applied for leave to defend their case i.e., Commercial Case No. 54 of 2018 but their application was refused. The applicant relies on the right to be heard and service of default notice under section 127 of the Land Act as grounds for illegality of the decision. Whereas I agree that the two alleged anomalies might be grounds of appeal, I part way with the applicant's counsel that they amount to illegality of the decision. Further, by looking at series of events as stated in the respondent's counter affidavit, it is clear that the applicant's move is calculated to defeat the execution process.

Since sufficient causes are determined upon consideration of all the circumstances obtaining in a particular case and having taken into account all the above, I am of the unfeigned findings that the applicant has failed to demonstrate sufficient cause to warrant extension of time. As such, the application deserves to be dismissed.

This application is therefore dismissed with costs.

It is so ordered.



Dated at Dar es Salaam this 13th March, 2023.


A. A. MBAGWA

JUDGE

13/03/2023

Court: Ruling has been delivered in the presence of Eliya Rioba, learned advocate for the applicant and Christa Nchimbi, learned advocate for the respondent this 13th day of March, 2023.




A. A. MBAGWA

JUDGE

13/03/2023