

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

**AT DAR ES SALAAM**

**MISC. COMMERCIAL APPLICATION NO. 206 OF 2022**

(Arising from Commercial Case No.55 of 2018)

**QUALITY GROUP LIMITED.....APPLICANT**

**VERSUS**

**NATIONAL BANK OF COMMERCE LIMITED.....RESPONDENT**

**Date of last order: 20/02/2023**

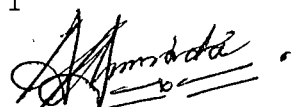
**Date of ruling: 13/03/2023**

**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 before this honorable court for the following orders: -

1. This honorable court be pleased to grant extension of time within which the applicant shall file an application for review of the judgement and decree in Commercial Case No.55 of 2018.
2. Costs of this application

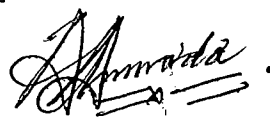


3. Any other reliefs this honorable court will deem fit and just to grant

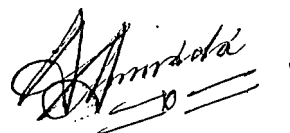
The application was supported by an affidavit sworn by Eliya Rioba, the applicant's learned counsel. Upon service, the respondent vehemently opposed the application through a counter affidavit sworn by Desmond Malyi in which he disputed the grounds stated in the applicant's affidavit. The applicant states that this application emanates from Commercial Case No. 55 of 2018 wherein the applicant was among the defendants and the respondent was the plaintiff. He continues that in the said case i.e., Commercial Case No. 55 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 praying the court to grant extension for the applicant to file an application for review of the summary judgment and decree in Commercial Case No. 55 of 2018.

When the matter was called on for hearing, the applicant had legal services of Eliya Rioba, learned advocate whereas the respondent was represented by 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

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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. 55 of 2018. Further, the applicant's counsel told the court that under paragraph 13 of the plaint it was stated that the default notice was issued but the applicant contends that the said default notice was not served to the applicant as per section 39 of the Companies Act. **Two**, the applicant's counsel faulted the trial judge in Commercial Case No. 55 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 leave to appear and defend the case was refused. The counsel clarified that joining the guarantors in the summary suit was contrary to the decision of the Court of Appeal in **Prime Catch (Exports) Limited and 4 others vs. Diamond Trust Bank Tanzania Limited**, Civil Appeal No. 273 of 2019, CAT at Dar Es Salaam.

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He submitted 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.

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

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

In contrast, the respondent resisted the application. The respondent's counsel adopted the counter affidavit to form part of the submission and proceeded to tell the court that the application had no merits. He complained that there is no reason as to why the applicant delayed to file application for four years. The counsel said that the inordinate delay offends the provision of section 14(1) of the Law of Limitation Act.

Further, the learned advocate submitted that failure by the applicant to explain reasons in the affidavit as to why they 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 delay without reasonable grounds.

Besides, 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 that the guarantors were given the right to be heard as they filed application to enter appearance but the same was struck out.

In fine, the counsel concluded that the application is without merits hence it should be dismissed with costs. The counsel insisted that the application has been filed in order to defeat the execution process which had been commenced by the respondent, the decree holder in Commercial Case No. 55 of 2018. He added that the respondent filed execution application on 16<sup>th</sup> August, 2022 while the present application was filed in November, 2022.

With regard to section 39 of the Companies Act, the respondent's counsel replied that the section caters for execution of companies' document and not service of the documents as the applicant's counsel wants this court to believe.

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 parties and upon canvassing the depositions, I have observed that there is no dispute that this application resulted from summary judgment and decree in Commercial Case No.55 of 2018. Now the applicant wants the court to extend time within which to file an application for review of the said 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 alleged illegality of the decision sought to be challenged. The applicant has contended that the summary judgment was entered against the guarantors contrary to the law in that they were denied their 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 a settled position of law that there is no hard and fast rule as to what constitutes sufficient reasons for grant of extension of time. Instead, sufficient causes are determined by reference to all the circumstances of

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each particular case. See **Regional Manager, TANROADS Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar Es Salaam.

Owing to absence of decisive factors for determination of good cause, courts do have regard to various considerations 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, existence of point of law of sufficient importance 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. 372/01 of 2018, CAT at Dar Es Salaam.

In the application at hand it is common cause that the judgment sought to be challenged was delivered on 26<sup>th</sup> November, 2018. However, there is nothing in the affidavit of Eliya Rioba to account for delay. Further, according to the summary judgment at page 2, the applicant was aware

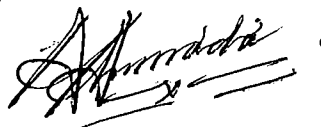
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of Commercial Case No. 55 of 2018 because the applicant and other defendants applied for leave to appear and defend the suit but the application was struck out. It is also in the respondent's affidavit that the respondent filed an application for execution on 16<sup>th</sup> August, 2022 as such, the respondent believes that the present application is intended to defeat the execution process which the respondent has commenced.

Upon considering all the circumstances obtaining in this matter, I am inclined to hold that the applicant inordinately delayed to bring this application without justifiable grounds.

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. 55 of 2018 but their application was refused. The applicant's counsel submits that this is an illegality in the judgment. However, in my opinion, this befits more a ground of appeal than illegality of the decision. Also, I am convinced that applicant's conduct of filing this application after the application for execution had been lodged by the respondent is intended to circumvent the execution process.

On all this account, I am of the unfeigned findings that the applicant has failed to establish sufficient cause, the consequence of which is to dismiss the application.

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This application is therefore dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 13<sup>th</sup> 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 13<sup>th</sup> day of March, 2023.



  
**A. A. MBAGWA**

**JUDGE**

**13/03/2023**