

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

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 218 OF 2022

(Originating from Misc. Commercial Cause No.143 OF 2021)

UKOD INTERNATIONAL COMPANY LIMITED.....APPLICANT

VERSUS

STANBIC BANK TANZANIA LIMITED..... RESPONDENT

RULING

Date of last order:14/02/2023

Date of ruling: 10/03/2023

AGATHO, J.:

The applicants, **UKOD INTERNATIONAL COMPANY LIMITED** instituted this application by way of chamber summons, made under, section 14 (1) of the Law of Limitation Act [Cap 89 R.E. 2019), and any other enabling provisions of the law the application was supported by an affidavit sworn Jama Ibrahim Moalim a Managing Director of the applicant, stating the reasons why this application should be granted. In this application, the applicants are in pursuit of extension of time within which to file an application for review of the consent judgment2021 dated 22nd December,2021 in Commercial Case No. 143 and an order for costs. Upon being served with the application the respondent contested the Application by filing a counter affidavit sworn by Loishiye Sikoi a legal service manager of the respondent stating the reasons why this application should not be granted.

When the matter was called for hearing on 14/02/2023 the Applicant was represented by Godlove Godwin, advocate and the Respondent had engaged legal services of Walter Massawe, learned Advocate. The hearing of this application was done orally.

In his oral submission Mr. Godlove Godwin, the learned counsel for the applicant premised his submissions by inviting the Court to adopt the chamber summons and supporting affidavit to form part of the oral submission in support of the application He contended that the instant application was made under Section 14 (1) of the law of limitation in which the applicant is praying for this court to exercise its discretionary powers to extend time within which to file an application for review in respect of consent judgement dated 22nd December,2021 in Commercial Case No. 143 of 2021. Submitting on the reasons for delay the learned counsel for applicant admitted that, it is true that the Applicant is out of time to file an application for review however he was quick to point that, the reasons that made her to delay in taking necessary steps in filing an application within the time was sickness.

Expounding on sickness the learned counsel submitted that, Mr. Jama Ibrahim Moalim the director of the applicant was attending and sometimes to be hospitalized for medical check-up. He added that, it is undisputed that, Mr. Jama Ibrahim Moalim has been suffering from several diseases like uncontrolled diabetes and other disease According to him it is the legal standing that, sickness is among the good cause to warrant this court to extend time to the applicant who failed to conduct or performs an act which is legally requires to be made in a certain time due to sickness To strength his argument he cited the case of **Richard Mbagala & Nine Others V. Alkael Minja and Three others ,Civil Application No 160 of 2015 at Dar es salaam** in which Mziray,J.A,as he then was, he extended time on ground of sickness

of the applicant. Concluding his submission, the learned counsel for applicant submitted that, that based on what he has submitted and legal standings, this Court be pleased to consider the applicant application that the delay did not aim at delaying the right to the respondent to enjoy the fruit of his judgment/decreed rather it was due to unforeseeable act of God that made the applicant fail to file the application on time. On that note the applicant prayed this Court to extend the time within which to file an application for review.

Submitting against the grant of application, Mr Walter Massawe, Advocate for the Respondent submitted that, it is a trite law that, for application for extension of time to be granted the applicant must adduce reasonable and sufficient grounds to warrant the extension of time. Submitting further the learned counsel for Respondent submitted that, the main reason which was advanced by the Applicant for grant of the application is sickness of the Managing Director of the applicant. Mr Massawe contended that although there are no fast and hard rules in determining sufficient cause by the court in granting extension of time but the court has to consider the facts of each separate case while guided by the principles which have been established as precedent. To support his submission, he referred this court to the case of **Elius Mwakalinga v Dominika Kagaruki & Fiver Others, Civil Application No. 120 of 2018 CAT**. In which the court held that in determining sufficient cause, the court has to look on the following elements, One, the length of the delay, second, the reason of the delay, third, whether there is arguable case by the applicant, fourth, whether there will be a degree of prejudice on the side of the respondent if the application is granted.

Expounding on the elements in the case above Mr. Massawe submitted that looking at the records length of the delay, is almost a year counting from the date of judgment to the date of filing this application because the consent judgment in respect of Commercial Case No. 143 of 2021 was entered on 22/12/2021 while the instant application was filed on 11/11/2022 which is almost a year from the date of consent judgement the applicant has not been able to account for the delay. He added that, even the purported medical certificate does not account for the delay of the whole year to excuse the managing director of the applicant from timely filing of the intended application for review. In addition to that, Mr Massawe submitted that sickness of one Jama Ibrahim Moalim, the managing director of the applicant cannot be considered as a sufficient reason for extension of time because the Applicant is a body corporate and not an individual he added that, it is a legal requirement that a company should have more than one director, then the other director of the company ought to have filed the application but the other director did not file and there is no any explanation on the failure of another director (personnel) file the application. Not only that but also the applicants previously were being represented but there is no any explanation of this facts.

Submitting on the chances of success if an application is granted, the learned counsel for applicant submitted that, the intention of the applicant is to review a consent judgment entered between the applicant and the respondent which was entered on the terms and conditions agreed by mutual consent of the parties including the applicant. He lamented that it is absurdity that the applicant would want this Court to review its own decision which was reached by parties' mutual agreement. According to the learned counsel for respondent, this application has no chances of success

because consent judgement was entered by mutual agreement of the parties. To cement his argument, he referred this court to the case of Rajabu **Kadima Ngeni and Another v Idd Adam [1991] TLR 38** where the Court held that since the intended appeal had absolutely no chance of success the application must fail. Submitting on the degree of prejudice against the respondent, Mr Massawe submitted that in this application there is a consent judgment entered in accordance with agreed terms by the parties. The applicant failed to adhere to the agreed terms, and she is now seeking a way to circumvent her obligation by abusing court process. On that note he invited the Court to find that the applicant has no sufficient ground or reason to warrant the court to extend time to file the application for review. He therefore prayed for the said application to be dismissed with costs.

In his rejoinder Mr Godlove Godwin, Advocate for the Applicant reiterated what he submitted in chief and added that the argument that the applicant has not accounted for each day of the delay is misconceived because paragraph four of the applicant's affidavit states that since 01/05/2021 to 14/11/2022 the director was sick and was hospitalized for medical check-ups from 14/11/2022 to the date of filing this application on 18/11/2022. According to the learned counsel for applicant it was only four days which the applicant delayed. Re-joining on the issue of the requirement that the company should have one director Mr Godwin simply submitted that this is not backed by any law. To him that is mere suggestion by the respondent counsel. Submitting on the issue of the applicant enjoying service of the advocate, he argued that the applicant was represented prior to the consent judgment, he added that the learned counsel for applicant misconceived the gist of the application when he submitted that the applicant is looking to overturn the judgment which was prepared

by himself with no reasons. According to Mr Godwin the applicant signed the terms of the deed of settlement that resulted to the compromise judgment dated 21/12/2021 unknowingly because he was sick. Mr. Godwin further reacted to the claim by the respondent that the applicant failed to adduce reasons to warrant for review by submitting that the reasons will be totally adduced in the application for review and not in this application for extension of time in which one is required to address the reasons for the delay to file an application within the time.

Having heard and followed the rivalling arguments for and against the grant of this application, in my respective opinion, the issue for determine is whether the applicant has demonstrated sufficient cause warranting this Court to grant the application. It is trite law that, applicant seeking for extension of time having failed to act or do a certain legal act, must disclose sufficient reasons regarding why he was unable to do that act within the prescribed time and always the aim must be to achieve real and substantial justice between the parties. Basically, what constitute a sufficient cause cannot be laid by any hard and fast rules but depends on the fact in each case. The above stance was stated in the case of **VODACOM FOUNDATION V COMMISSIONER GENERAL (TRA) CIVIL APPEAL NO 107 /20 OF 2017(Unreported)**. However, the relevant factors must be taken into account, these includes, length of the delay, the reasons for the delay whether there are chances of success if application granted if will cause prejudice to the respondent if time extended. Having that in mind and back to instant application, the issue for my determination is whether applicant has advanced sufficient reasons for this court to exercise its discretion and grant the application.

The applicant contention is that, the delay to file the application for review was attributed by sickness of the managing director of the applicant. While the learned counsel for

respondent refuted reliance on sickness and submitted that, sickness of the managing director of the applicant cannot be considered as a sufficient reason for extension of time because the Applicant is a body corporate. From the outset and with due respect to applicant learned advocate, the reasons advanced for grant of extension of time to file application for review are baseless and does not warrant the grant of the application. Am saying so on the following reasons. **One**, I am aware that sickness is among the grounds for extension of time however, the applicant has to prove that indeed it is sickness that caused the delay by providing concrete evidence showing that indeed applicant was sick and due to is sickness he could not do take a necessary step in filling the application. In the present application sickness cannot be a sufficient cause because the applicant is a company with separate legal personality from that of the managing director. It means that the affairs of the company cannot stop operating on the reasons that the single director is sick. It should be noted that, Section 3(1) of the Companies Act No 12 R.E. 2019 requires a company to have two directors and a company secretary.

Therefore, the ailment of the managing director cannot therefore be an excuse for the delay of the Applicant to file the application for review because the applicant is a body corporate and not an individual. Since it is a legal requirement the company to have more than one director, it is my considered view that the other director of the company ought to have filed the application but for the reasons known best to applicant the other director neither filed the application nor was there any explanation on the failure of that other director to file the application. As a such even the case cited of **Richard Mbagala's** (supra) is distinguishable because the applicants were natural persons while in the instant application the applicant is a company. And the argument that the applicant was extremely sick as a such it was impracticable for the managing director to engage the

legal counsel, in my view this argument was raised out of the ignorance because it is the company that ought to do consultation with the lawyers not a single director.

Two, the purported medical certificate brought is a photocopy. It is also like an open letter written by Dr Thomas Kapalata of Shree Hindu Mandal Hospital explaining the sickness of Mr Jama Ibrahim Moalin. There were no receipts or medical record showing that he was really hospitalized. The letter itself is dated 07/11/2022 while the applicant under paragraph four of the affidavit averred that since 1st January,2021 applicant was sick. In my view, the medical report is not genuine because it is not clear on the date in which the applicant was hospitalized and in which hospital ward, he was admitted. And worse enough the author of the letter did not swear an affidavit to verify the contents of the letter. In addition, even if it was true that applicant was admitted on 07/11/2022 that would not have been a sufficient reason for delaying for months because the consent judgement was entered on 21st December,2021. The applicant did not show how the Managing director's ill health on 1st January,2021 prevented her to file application for review. More so, it is a common knowledge that a person who is sick for such long time of period would have sought medical attention several times, but the applicant has tendered only a confirmation letter on her managing director's health status. At this juncture I subscribe to the settled principle that a party delay to take action provided by the law without explaining how that person ill health prevented him because he was sick is not a sufficient cause for delay. On that note I find no merit in the applicant's contention that she delayed filing the review application because her director was sick.

Three, and by the way, for review to be successful there must an error apparent on record. A claim by the Applicant that he did not know the implication of what he was signing is not an error apparent on record and this averment is without merit. I am saying

so because the Applicant was under legal representation. Mr Jama Ibrahim Moalim had lawyers around him who advised him. Again, he never had any mental disability when he signed the said settlement deed. I thus reject the argument that he was sick and was not aware of the implication of the deed of settlement he was signing .

Having proffered the submissions by the parties and examining their affidavits and considering the law, I find the present application be without merit. It is thus dismissed with costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 10th Day of March 2023.



U. J. AGATHO
JUDGE
10/03/2023

Date: 10/03/2023

Coram: Hon. U.J. Agatho J.

For Applicant: Geoffrey Mushumbusi, Advocate holding brief o Godlove
Godwin, Advocate

For Respondent: Walter Massawe, Advocate

C/Clerk: Beatrice

Court: Ruling delivered today, this 10th March 2023 in the presence of Geoffrey Mushumbusi, Advocate holding brief if Godlove Godwin, counsel for the Applicant, and Walter Massawe, Respondent's Advocate.



U. J. AGATHO
JUDGE
10/03/2023

