

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 148 OF 2023

(Originating from Commercial Case No. 87 of 2022)

MAXIMA CLEARING AND FORWARDING LTD..... APPLICANT

VERSUS

GG AFRICA INTERNATIONAL LTD RESPONDENT

RULING

Date of last order: 23/02/2024

Date of ruling: 08/03/2024

AGATHO, J.:

This ruling stems from the applicant's application for extension of time within which she may file an application for setting aside the dismissal order given on 4th April 2024 in respect of Commercial Case No. 87 of 2022. The application was by way of chamber summons supported by the affidavit of Anindumi Semu, counsel for the applicant. The respondent was served upon with a copy summons and application via substituted service by publication in Mwanachi newspaper. Despite being served she did neither file a counter affidavit nor enter appearance. The hearing was thus conducted ex parte, and by way of written submission.

The affidavit of Mr. Semu contains grounds for seeking extension of time. The key ones in my view are two: that there is illegality, the applicant was diligent and there was no sloppiness on her side, and she accounted for each day of the delay. These grounds are found in paragraphs 3-6 and 8-9 of the affidavit where the applicant's counsel is accounting for each day of the delay. He mentioned how and when he followed up for copies of the proceedings, the notice of appeal he filed and later he withdrew it. He also averred on paragraph 8 that he travelled to Moshi. Although here he did not produce any evidence to confirm that claim that he really travelled to Moshi. Moreover, Mr. Semu averred in his affidavit at paragraph 9 that after generation of control number and payment done, it took several days for them to get the SMS confirming the payment done.

As for illegality, this is averred on paragraph 7 of the affidavit which states that the court dismissed the suit under Rule 28(2) of the High Court (Commercial Division) Procedure Rules 2012 as amended in 2019. Along with that paragraph 2 contains annexure MAX 1 – copy of the court proceedings in Commercial Case No. 87 of 2022 and as rightly submitted by Mr. Semu the Case was dismissed on the day that was set for mention and not hearing. That is the illegality the applicant has set as a ground for extension of time.

The grounds highlighted hereinabove are sufficient cause for extension of time. The point of illegality is often taken a sufficient ground for extension of time as held in **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010**, and **Secretary Ministry of Defence and National Service v Devran Valambia [1992] TLR 387**. It has also been held in **Tanga Cement Co. Ltd v Jummane D. Masangwa and Another, Civil Application No. 6 of 2001 CAT** that the applicant is duty bound account for each day of the delay, which in the case at hand was done.

Since the applicant has shown sufficient cause for the delay, the application is granted. She is given 14 days from the date of receiving a copy of this ruling to proceed to file her application.

No order as to costs is given.

Order accordingly.

DATED at DAR ES SALAAM this 8th Day of March 2024.



U. J. AGATHO


JUDGE

08/02/2024



Court: Ruling delivered today, this 8th March 2024 in the presence of Faiza Salah, advocate holding brief of Anindumi Semu for the applicant.




U. J. AGATHO
JUDGE
08/03/2024