

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

MISC. COMMERCIAL APPLICATION NO. 5457 OF 2024

[Emanating from Misc. Application No. 14 Of 2021]

IN THE MATTER OF COMPANIES ACT, 2002, CAP 212

AND

**IN THE MATTER OF PETITION FOR WINDING UP OF KILWA
RESOURCES LIMITED AND KILWA RUINS LIMITED**

BETWEEN

ALEX GAITHAN MGONGOLWA..... APPLICANT/LIQUIDATOR

Vs

AMIR RAMADHAN MPUNGWE..... 1ST RESPONDENT
MICHAEL JOHN LANCASTER WARREN..... 2ND RESPONDENT
ANTHONY JOHN HAVELOCK DUNN..... 3RD RESPONDENT
GABRIELDORETHREEE DUNN..... 4TH RESPONDENT
JAMES GRANT TAYLOR..... 5TH RESPONDENT
DEPOSIT INSURENCE BOARAD..... 6TH RESPONDENT
BETRAM EYAKUZE..... 7TH RESPONDENT
ANNISA AMI MPUNGE..... 8TH RESPONDENT
KILWA RESOURCES LIMITED..... 9TH RESPONDENT
KILWA RUINS LIMITED..... 10TH RESPONDENT
REGISTRAR OF COMPANIES..... 11TH RESPONDENT

RULING

Date of Last Order: 20/03/2024

Date of Ruling: 21/03/2024

GONZI, J.

The applicant (Liquidator) Mr. Alex Gaithan Mgongolwa filed this application in court under certificate of urgency. The application was

brought under section 93 of the Civil Procedure Code and Section 14 of the Law of Limitation Act and the applicant is praying for the following orders ex-parte to wit:

- (a) That, this honourable court be pleased to grant extension for a just and reasonable time given the circumstances of this matter, for the applicant to continue acting as the official liquidator as appointed by this honourable court, through Hon. S. M. Magoiga J. in his judgement dated 8th October 2021 in Misc. Application No. 14 of 2021.**
- (b) Any other relief this Honourable Court may deem fit and just to grant.**

This application at hand was supported with an affidavit sworn by Mr. Alex Gaithan Mgongolwa, the applicant, containing all the material facts pertaining to this application. There was no counter affidavit as the application was brought exparte the Respondents; and so far as the records of the court show, the matter has always continued un-opposed since the main application Misc. Application No. 14 of 2021 was instituted.

The facts obtaining in this application as can be gathered from the affidavit of Mr. Mgongolwa and the annexures attached thereto, are that on the 08th day of October, 2022 through the Judgement of Hon. S. M. Magoiga, J., the applicant was appointed by this Court as the official liquidator of Kilwa Resources Limited and Kilwa Ruins Limited, the 8th and 9th respondents companies respectively, for a period of six (6) months and to exercise all the powers stipulated under section 299, 300, 301, 302, 303, 304 and 305 of the Companies Act, 2002. Copy of the Court Judgment appointing the Applicant as the liquidator was attached to the affidavit as annexure "A1". That upon expiry of the initial six months' period given, the applicant through Misc. Application No. 30 of 2023 applied for and was granted by this court an extension of just and reasonable time from the circumstances of the matter to continue with his responsibilities as a liquidator in the 8th and 9th Respondent Companies. The extension of time granted was for 12 months' period which lapsed effectively on 9th March, 2024. Copy of the Order in Misc. Application No. 30 of 2023 is attached to the affidavit as annexure "A2". In his affidavit, the applicant further stated that during all this time he has been acting as the Official Liquidator of the 8th and 9th respondent companies herein, he has succeeded to sell part of the properties of the

two companies and has signed sale agreements of two plots with one Joseph Kahama whereby the sale agreements were executed on 27th February, 2023. He stated that for the completion of transfer process in respect of the sold landed properties, the applicant needs to finalize the conveyance process. He stated that as the earlier extended period of 12 months granted by the court lapsed on 9th March, 2024, it has once again become necessary for the applicant to file this application in order to obtain an extension of time for another period of 12 months so that he can proceed to finalize the selling of the remaining properties, conveyancing of the already sold properties and to exercise all his powers as a liquidator as stipulated under sections 299, 300, 301, 302, 303, 304 and 305 of the Companies Act, 2002. The Applicant concluded in his affidavit that his appointment was done by this court hence this application at hand.

When this matter was scheduled for necessary orders on 20th March, 2024 the applicant, Mr. Alex Gaithan Mgongolwa, appeared in person and briefly submitted that he filed this application praying to be given just and reasonable additional time in order to continue working and acting as an official liquidator as he was appointed by this court in Misc. Commercial Application No.14 of 2021 before Hon. Magoiga J. He adopted his affidavit and submitted that in the circumstances as the

liquidation process is not completed, there is a need for time to be extended by the court to enable him complete the conveyancing process of the sold plots of land formerly owned by the 8th and 9th respondent companies. He concluded that upon completion of the liquidation exercise the applicant will duly file a report in court.

Section 93 of the Civil Procedure Code Cap 33 R.E 2019 provides that:

"Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

Section 14(1) of the Law of Limitation Act CAP 89 R.E 2019 which has also been relied upon by the applicant provides that:

"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

Having read and analysed the submissions by the applicant as well as the affidavit in support of the application at hand, it is true that the applicant was appointed by this Court on 8th October 2021 (as per Hon. Magoiga, J.) to act as a Liquidator in terms of section 294 of the Companies Act, Cap 212. Also, it is true that the Applicant has not yet completed the liquidation process of the 8th and 9th respondent companies despite the earlier granted extension of time for 12 months; but undoubtedly he has made good progress since then in the discharge of his functions as the Official Liquidator. In the circumstances, I am satisfied that there is a good cause to grant the applicant an extension of time within which he can continue to act as the Official Liquidator of the 8th and 9th Respondent Companies as appointed by this honourable court, and ultimately file his report on accounts in accordance with section 307 of the Companies Act, Cap 212 before he is discharged and released from that office. The Applicant has prayed for 12 months' extension of time in his chamber summons. But I am mindful that the Court had initially granted the applicant 6 months' period upon his appointment to finish the liquidation process in the 8th and 9th Respondent companies. When the 6 months lapsed, the applicant applied for and was granted 12 months' additional time. Liquidation of the 8th and 9th Respondent Companies is a legal process which has socio-

economic implications to the employees, shareholders and directors of the 8th and 9th Respondent companies. Equally there are financial implications to the national economy. It is essential and desirable that despite the challenging nature of the task, the liquidation exercise should be accomplished timely. It would be better that the process be completed before the turn of the year. In that regard I am of the settled view that 9 months would be an ideal extended time for the applicant in that regard.

In the upshot this application is granted. I hereby grant the applicant an extension of time for nine months from the date of this Ruling within which to continue acting as the Official Liquidator of the 8th and 9th Respondent Companies as appointed by this Honourable Court, and ultimately file his report on accounts in accordance with section 307 of the Companies Act, Cap 212.

I make no order as to costs since the application was heard ex-parte.

It so ordered.




A. H. GONZI

JUDGE

21/03/2024

Ruling is delivered in Court this 21st day of March, 2024 in the presence of Ms. Lujaina Mohamed, Advocate for the Applicant, and in the absence of the Respondents in respect of whom the application proceeded ex parte.

A handwritten signature in black ink, appearing to read "A. H. Gonzi".
A. H. GONZI

JUDGE

21/03/2024