

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

LAND CASE NO. 245 OF 2021

QUALITY GROUP LTD PLAINTIFF

VERSUS

KNIGHT FRANK (T) LTD DEFENDANT

RULING

I. ARUFANI, J.

This ruling is in respect of an oral application made to this court by Mr. Pladius Mwombeki, counsel for the defendant that, he be allowed to file in the court the defendant's written statement of defence out of time. He told the court that, on 23rd December, 2021 they were served with summons to file in the court the defendant's written statement of defence when it was court vacation. He said by the time he was required to file the defence of the defendant in the court he was sick and failed to perform his official duties. He prayed for two or three days to file the written statement of defence of the defendant in the court.

The prayer by the counsel for the defendant was strongly opposed by Mr. Eliya Rioba, counsel for the plaintiff. The counsel for the plaintiff told the court that, the law as provided under Order VIII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019 is very clear that, a prayer for

extension of time to file written statement of defence in the court out of time is required to be made before expiration of twenty one days from the date of being served with summons to file written statement of defence or within seven days after expiration of the time prescribed for filing a written statement of defence in the court. He stated that, they have been appearing in the court in respect of Miscellaneous Land Application No. 739 of 2021 from December, 2021 to March, 2022 but the counsel for the defendant did not seek for extension of time to file the defendant's written statement of defence in the court. He prayed the court to refuse to accept the prayer of the counsel for the defendant and allowed the hearing of the case to proceed ex parte against the defendant.

The counsel for the defendant stated in his rejoinder that, there is no point in time when they were appearing in the court for Miscellaneous Land Case Application No. 739 of 2021 the present case was ever called. He said the case was called for the first time on 8th March, 2022 and as the counsel for the plaintiff was absent, they reserved their prayer and come to make the same on 15th March, 2022 when the case was coming for mention. He submitted that it is for the interest of justice that the defendant be given three days to file its written statement of defence in the suit.

Having considered the prayer made to the court by the counsel for the defendant and after going through the arguments made by the counsel for the parties the court has found proper start with Order VIII Rule 1 (1) of the CPC which states as follows: -

"Where a summons to file a defence has been served in accordance with Order V and the defendant wishes to defend the suit, he shall within twenty-one days from the date of service of the summons, file to the court a written statement of defence and enter appearance on the date specified in the summons."

The wording of the above quoted provision of the law is very clear that, a defendant wishing to defend a suit is required to file in the court a written statement of defence within twenty one days from the date of being served with summons to file a defence. The court has found subsection 3 of the above quoted provision of the law cited by the counsel for the plaintiff is the one governing application for extension of time to file written statement of defence in a suit. The cited provision of the law requires a defendant who has failed to file a written statement of defence in the court within the period of time prescribed under Rule 1 (1) of Order VIII of the CPC quoted hereinabove to apply for extension of time before expiration of the stated period of time.

Where the stated period of time has expired, the application for extension of time to file a written statement of defence is required to be made within seven days after the date of expiration of the period of time prescribed for filing a written statement of defence. In order for the application for extension of time to file a written statement of defence out of time to be granted the applicant is required to show good cause for failure to file a written statement of defence within the time prescribed by the law to move the court to grant the sought extension of time. For clarity purpose the above referred subsection 3 of the law states as follows:-

"The court may, on application by the defendant before the expiry of the period provided for filing a written statement of defence or within seven (7) days after expiry of that period and upon the defendant showing good cause for failure to file such written statement of defence, extend time within which the defence has to be filed for another ten days and the ruling to that effect shall be delivered within 21 days."

From the wording of the above quoted provisions of the law it is crystal clear that the application for extension of time to file in a court a written statement of defence is required to be made before expiration of twenty one days prescribed for filing a written statement of defence or within seven days after the date of expiration of the stated twenty one

days. After expiration of the stated period of time a court cannot entertain an application for extension of time to file a written statement of defence in a court.

The above stated position of the law is drawing an inspiration from what was stated by the Court of Appeal in the case of **National Bank of Commerce Limited V. Partners Construction Co. Ltd**, Civil Appeal No. 34 of 2003, CAT at DSM (unreported). When the Court of Appeal was dealing with the issue of application of extension of time to file a written statement of defence out of time under the proviso to Order VIII Rule 1 (2) of the Civil Procedure Code which by that time was requiring an application of that nature to be made within twenty one days after expiration of the prescribed period of twenty one days for filing a written statement of defence it stated as follows: -

"The meaning of this, in our view, is that, when the defendant fails to file written statement of defence within the prescribed period of twenty one days, he may apply for extension of time, provided he does so within twenty one days, from the expiration of the prescribed period of twenty one days. If he does so more than twenty one days from the expiration of the prescribed period of twenty one days, his application cannot be entertained."

Although it is stated in the above quoted provision of the law that the application for extension of time was supposed to be made within twenty one days from the expiration of the prescribed period of twenty one days for filing in the court a written statement of defence, but after the amendment effected in the CPC as reflected in the revised edition of the mentioned law issued in 2019 the said requirement was placed under Order VIII Rule 1 (3) of the CPC. The stated amendment reduced the period of applying for extension of time to file a written statement of defence from twenty one days from expiration of twenty one days prescribed for filing a written statement of defence to seven days. Therefore, if a defendant fails to file a written statement of defence within twenty one days prescribed for filing a written statement of defence and he failed to apply for extension of time to do so within seven days after expiration of the prescribed period of twenty one days for filing a written statement of defence he cannot do so after expiration of the stated period of time.

When the court was dealing with the similar application and the requirement to comply with time prescribed under Order VIII Rule 1 (1) and (3) of the CPC cited hereinabove in the case of **Tanways Company Ltd V. Jamaa Fast Food Limited & Three Others**, Land Case No. 77

of 2019, HC Land Division at DSM (unreported) it stated that, to allow a party to any suit to do things contrary to law not only shows disrespect to the law but also creates chaos to the entire process of administration of justice. That thing should not be allowed to recur. Otherwise, the integrity of the court would be jeopardized; and, it would be an exposure to public ridicule if the law is disregarded with impunity without any reaction.

If for the sake of argument, it will be taken the prayer to file a written statement of defence in the court can be entertained after expiration of the prescribed period of time the issue which would have been determined in the application at hand would have been whether the counsel for the defendant has managed to show good cause for failure to file the defendant's written statement of defence in the court within the time prescribed by the law to move the court to grant his prayer.

The question to ask before going to the above framed issue is what is "good cause" which is required to be shown to move the court to grant extension of time to file a written statement of defence out of time. The court has found the term good cause for failure to file in the court a written statement of defence within a time prescribed by the law has not been defined in the CPC or any other law. However, our courts have tried to define the term "good cause" in various case when determining whether

good cause has been shown to move the court to grant extension of time to do anything required by the law to be done within a prescribed period of time. One of the cases where the term "good cause" was defined is in the case of **Bertha V. Alex Maganga**, Civil Reference No. 7 of 2016 (unreported) where the Court of Appeal of Tanzania stated as follows: -

*"Whilst it may not be possible to lay down an invariable definition of **good cause** so as to guide the exercise of the court discretion, the court is enjoined to consider, inter alia the reasons for the delay, the length of the delay, whether the applicant was diligent and the degree of prejudice to the respondent if time is extended."* [Emphasis added].

While being guided by the position of the law stated hereinabove the court has found the counsel for the defendant told the court that, on 23rd December, 2021 he was served with summons to file in the court a written statement of defence of the defendant in the matter. He said he failed to file the defence of the defendant in the court within the time prescribed by the law as he was sick.

He added that, from when the matter was filed in the court, the matter was never called and when it was called on 8th March, 2022 the counsel for the plaintiff was not present in the court that is why he delayed to apply for extension of time to file the defendant's written statement of

defence in the court within the time prescribed by the law. From the facts stated hereinabove it is crystal clear that from when the defendant's counsel was served with the summons to file in the court the defence of the defendant up to when he prayed to file the written statement of the defendant in the court out of time about 82 days had passed.

The court has found that, although the counsel for the defendant stated he was served with summons to file the defendant's written statement of defence during the court vacation but the court has failed to see how that would have been a cause of failure to file in the court defence of the defendant within the time prescribed by the law. The court has come to the above finding after seeing there is no law stating pleadings and other documents required to be filed in the court within a prescribed period of time cannot be filed in the court during the courts' vacations. To my understanding court's vacations bars hearing of cases which are not in the nature of urgency but other business of the court like that of filing pleadings and other documents in the court continues as usual because the registries and offices of the court are not closed.

The court has considered another argument by the counsel for the defendant that he was sick that is why he delayed to file the defendant's written statement of defence in the court but find that argument is not

supported by anything material to show he was really sick and the alleged sickness prevented him to file the defence of the defendant in the court within the period of time prescribed by the law. The court has found it was stated in the case of **Shembilu Shefaya V. Omary Ally**, [1992] TLR 245 that, in order for sickness to be accepted as a ground for delay to do anything required by law to be done within a certain period of time there must be an elaboration and evidence to show the applicant was sick and incapable of taking the step he was required to take throughout the period of the delay. As there is no such an elaboration or evidence to support the argument by the counsel for the defendant that he was sick and the said sickness caused him to fail to do what he was required to do, the court has found that cannot be a good cause for granting the defendant extension of time to file his written statement of defence in the court out of time.

The court has found that, although it is true that from when the case was filed in the court it was not called until 8th March, 2022 but that cannot be a ground for failure to file written statement of defence in the court within the time prescribed by the law or making an application for extension of time to do so within the prescribed period of time. To the view of this court the counsel for the defendant would have made a formal

application for extension of time to file a written statement of defence of the defendant in the court before expiration of time provided for seeking for extension of time to file written statement of defence in the court. To say he was waiting for the case to be called, to the view of this court is sign of lack of diligence which is not supported by any law or logic as the law provides for a specific period of time upon which an application of such nature must be made before the court.

After seeing the application for extension of time to file written statement of defence of the defendant in the court was made out of time prescribed by the law, and the counsel for the defendant has not managed to satisfy the court there is a good cause for granting him extension of time to file a written statement of defence of the defendant in the court, the court has considered the prayer by the counsel for the plaintiff that the plaintiff be allowed to prove his case ex parte against the defendant and find that, the said prayer is in line with what is provided under Order VIII Rule 14 (1) of the CPC which states as follows: -

"Where any party required to file a written statement of defence fails to do so within the specified period or where such period has been extended in accordance with sub rule 3 of rule 1, within the period of such extension, the court shall, upon proof of service and on oral application by the plaintiff

to proceed ex parte, fix the date for hearing the plaintiff's evidence on the claim."

While being guided by the position of the law stated in the above quoted provision of the law the court has found that, as the counsel for the defendant has failed to file in the court a written statement of defence of the defendant; and, he has failed to satisfy the court there is a good cause for granting the defendant extension of time to file in the court a written statement of defence of the defendant, there is no justifiable reason to refuse the prayer by the counsel for the plaintiff that, the plaintiff be allowed to proof its case ex parte against the defendant.

Consequently, the prayer by the counsel for the defendant to file in the court the written statement of defence of the defendant is hereby not granted and in lieu thereof the plaintiff is allowed to proceed to prove its case ex parte against the defendant. It is so ordered.

Dated at Dar Es Salaam this 13th day of May, 2022



I. Arufani
JUDGE
13/05/2022.

Court:

Ruling delivered today 13th day of May, 2022 in the presence of Mr. Charles Ndaki, learned advocate holding brief of Mr. Eliya Rioba, counsel for the plaintiff and in the absence of the defendant and its counsel. Right of appeal to the Court of Appeal is fully explained.



I. Arufani
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JUDGE
13/05/2022.