

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 69 OF 2023**

MUSSA HUSSEIN KHAMIS @ Mussa Bajuni PLAINTIFF

VERSUS

1. MTEMI NALUYANGA 1ST DEFENDANT

2. TANGANYIKA AUCTION MART CO. LTD 2ND DEFENDANT

RULING

Date of last Order: 27/7/2023

Date of Ruling: 10/8/2023

A. MSAFIRI, J.

On 27/7/2023, Mr. Alex Balomi, advocate for the 1st defendant, moved this Court under Order VIII Rule 1 (3) of the Civil Procedure Code, Cap 33 R.E 2019 (the CPC), seeking for leave of extension of time to file the 1st defendant's written statement of defence (WSD). The reasons he advanced are that, initially, the summons and plaint on this suit were initially sent to the 1st defendant personally. Later, the said documents were sent to Mr. Balomi's assistant while Mr. Balomi was attending High Court session at Bukoba.

That, when he came back, he saw the documents and prepared WSD only to find that the said WSD was out of time.

Adls.

Mr. Balomi said that the matter was set before the Deputy Registrar (DR), who could not extend the time to file WSD as she has no such powers. He pray for the Court to grant the sought extension for one day.

Mr. Benito Mandele vehemently contended the prayer for extension of time. He argued that the counsel for the 1st defendant did not state when the documents were submitted to him. That, the service was done since 14 April 2023 and the 1st defendant has been appearing in Court since then, and has never sought for leave of the Court to file the WSD out of time.

Mr. Mandele added that, the discretion of this Court under Order VIII Rule 1(3) is of no help as 21 days has already expired.

He said that the only available avenue for the 1st defendant was to file an application for enlargement of time in order to file his defence out of time, which he has not done. He prayed for the Court to disregard the prayers for extension of time and allow suit to proceed ex-parte.

In rejoinder, Mr. Balomi reiterated his submissions and prayers.

Order VII Rule 1 of the CPC provides as follows;

*1(1) 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***

Alls.

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.
(Emphasis added).

In the above cited Rule, it is specified that it is the defendant who have to file to the Court a written statement of defence (WSD). The Rule does not say the defendant or his advocate or representative. This is in answer to the submission by Mr. Balomi that, it was the defendant who received the plaint and other documents.

Hence if the defendant admits to have received the plaint, then it was his obligation to file his defence on time. The excuse of being a layman is disregarded here as Mr. Balomi is well aware of the principle that the ignorance of law has never been an excuse or a defence. The records show that the 1st defendant has been appearing in Court personally. On 09/5/2023 he appeared in Court and admitted to have received the plaint.

Nevertheless, Mr. Balomi did not tell the Court when he received the plaint and other documents from the 1st defendant. When did he return back from Bukoba where he was attending session and when did notice that the 1st defendant was out of time in filing his WSD? Mr. Balomi

Atto.

submitted generally or in blanket and left it to the Court to make assumptions on time, which the Court could not do.

Mr. Balomi stated that the matter was set before the DR who could not extend the time as she has not such powers. However, the counsel did not state on whether he or the 1st defendant made the prayers before the DR. I say so because, even if the DR have powers to grant or not to grant an extension of time neither Mr. Balomi, nor his client the 1st defendant were in attendance in Court when the matter was called before the DR on 19/6/2023. Hence this submission by Mr. Balomi has no any base.

Order VIII Rule 3 of the CPC provides thus;

*"(3) 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."*

Adele

I agree that the above provision is not couched in mandatory terms and it is on the discretion of the Court. However, I believe this discretion should be exercised judiciously and extension should be given only upon the defendant showing good cause for delay.

Basing on my reasoning above, I find that the counsel for the 1st defendant has no advanced good cause for delay to file WSD within time.

In addition, the application for extension of time has been made today 27/7/2023 which is well after the expiry of 21 days period given for filing a WSD, and well beyond seven (7) days after expiry of the given period i.e. 21 days.


The plaint was served to the 1st defendant on 14/4/2023. The expiry of 21 days was on 05/5/2023. If the public holidays are excluded, then the expiry date was on 12/5/2023. The first attempt to pray for an extension of time was on 10/7/2023 when the 1st defendant appeared in person and informed the Court that his advocate prays for an extension of time and the reasons will be explained by the advocate himself.

By this time, the time given for application for extension of time under Order VIII Rule 1 of the CPC has already lapsed.

Atls.

For the foregoing reasons, this Court finds that the prayers by the 1st defendant through his advocate are not tenable and are hereby dismissed. The suit shall proceed ex-parte against the defendants. No order as to the costs.

It is so ordered.



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A. MSAFIRI
JUDGE
10/8/2023

