

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB-REGISTRY**

**MISC. CIVIL APPLICATION NO 525 OF 2023**

*(Arising from Civil Case No. 184  
of 2020 in the High Court of Tanzania, Dar es Salaam Sub-Registry)*

**ETG INPUTS LTD.....APPLICANT**

**VERSUS**

**DOMINIC LOGISTICS (T) LTD..... RESPONDENT**

**RULING**

*Date of last order:13-3-2024*

*Date of ruling:12-4-2024*

**B.K.PHILLIP, J**

This application is made under section 14 (1) of the Law of Limitation Act.  
The applicant's prayers are reproduced verbatim hereunder;

- i) Extension of time to review the ruling of this court in Civil Case No. 184 of 2020 by Hon, Judge Kakolaki dated 4<sup>th</sup> March 2022.
- ii) Costs abide by the results of the application.
- iii) Any other order this Honourable Court may deem fit and just to grant.

The application is supported by an affidavit sworn by learned Advocate Kelvin Edward Lubago. The learned advocate Mussa Kiobya filed a counter affidavit in opposition to the application. The application was ordered to be heard by way of written submissions. The advocate of the applicant was supposed to file his written submission in support of the application on or before 19<sup>th</sup> February 2024. Submission by the respondent's advocate was supposed to be filed on or before 29<sup>th</sup> February 2024. Rejoinder if any by the applicant's affidavit was supposed to be filed on or before 7<sup>th</sup> March 2024. The learned

advocate Symphorian Revelian Kitare filed the submission in support of this application as ordered by this court. However, the advocate for the respondent did not file any reply to Mr. Kitare's submission as ordered by this court. It is a well-settled position of the law that failure to file a written submission is tantamount to failure to prosecute a case [See the case of **Godfrey Kimbe Vs Peter Ngonyani, Civil Appeal No.41 of 2014**, (unreported)]. Thus, I have been constrained to compose this Ruling based on the submissions made by Mr. Kitare only.

Briefly, the background to this application is that the applicant and respondent herein were the plaintiff and defendant in Civil Case No.184 of 2020, respectively. Upon being served with the plaint the respondent raised a point of preliminary objection that this court had no jurisdiction to entertain the suit. The trial Judge upheld the point of preliminary objection and ordered the case to be transferred to the Resident Magistrate's Court of Dar es Salaam at Kisutu, (Henceforth "Kisutu RM's Court"). The court order was effected accordingly. However, when the applicant attempted to file his case at Kisutu RM's Court, the Resident Magistrate Charge declined to admit the suit on the reason that the proceedings in that suit had advanced beyond being transferred to another court. Consequently, he returned the case file to this court. Upon making follow-ups on the fate of the case, the counsel for the applicant was advised to institute an application for review for this court to revisit its decision. However, by the time that advice was given the time for applying for review had already expired. Hence, this application.

Submitting in support of this application, Mr. Kitare adopted the contents of the affidavit in support of the application. He went on to submit that for an application for an extension of time to be granted the application has to meet the condition stipulated in section 14 of the Law of Limitation Act, Cap. 89, to wit; The applicant has to give reasonable/sufficient cause for the delay in instituting the appeal or application. The application for an extension of time may be made either before or after the expiry of the period of limitation

prescribed for such appeal or application.

Furthermore, Mr. Kitare submitted that the factors to be looked into to determine whether or not the cause for delay given by the applicant is reasonable or sufficient are;

- i) Length of delay.
- ii) The reason for the delay.
- iii) whether there is an arguable case such as whether there is a point of law on the illegality or otherwise of the decision sought to be challenged; and
- iv ) The degree of prejudice against the defendant if the application is granted.

To support his argument, he cited the case of **Elius Mwakalinga Vs. Domina Kagaruki and Others, Civil Application No. 120/17 of 2018**, (unreported). Moreover, Mr. Kitale argued the period between 4<sup>th</sup> March 2022 when this court ordered the suit to be transferred to Kisutu RM's Court to 5<sup>th</sup> September 2022 when the counsel for the applicant was informed that the Resident Magistrate in charge of Kisutu RM's Court declined to admit the case, should be excluded from computation of the period of delay because the applicant was complying with the order of this court for the transfer of the case. He contended that the applicant is supposed to account for the period between 5<sup>th</sup> September 2022 to 28<sup>th</sup> July 2023 when the 1<sup>st</sup> application for review filed by the applicant was struck out. However, he was quick to point out that the aforesaid period was accounted for under paragraphs 8, 9, and 10 of the affidavit in support of this application. Further, he contended that the period between 28<sup>th</sup> July 2023 to 19<sup>th</sup> September 2023 when the application in hand was filed in court was used for preparation of the present application, filing it online, admission, and completion of the filing process.

Regarding the condition on the existence of an arguable case, Mr. Kitare submitted since Kisutu RM's Court declined to admit the suit, that factor

overrides other factors for the applicant to be granted the extension of time because the delay was caused by the court itself. The applicant cannot be blamed for mistakes committed by the court. He cited the case of **Tanzania Revenue Authority vs. Tango Transport Company Ltd; Civil Application No. 5 of 2006**, (unreported), to cement his argument.

On whether or not there will be prejudice against the respondent if the application is granted, Mr. Kitare argued that since the present application is for an extension of time, if the same is granted, the respondent cannot be prejudiced as he will have a chance to challenge the intended application for review and justice will prevail between the parties.

In addition to the above, Mr. Kitare submitted this application is properly filed before this court as it falls within the ambit of section 3A(2) and (3)(a) of the Civil Procedure Code, ( "CPC") which require the Court to seek to give effect to the overriding objective and to handle all matters presented before it to attain just determination of the proceedings. He beseeched this court to allow the present application to enable the applicant to file her application for review.

Having perused the court's records and the affidavit in support of this application as well as examined the arguments made by Mr. Kitare, I hasten to say that this application has merit as I shall elaborate hereunder.

It is a settled position of the law that in an application for an extension of time, the applicant has to give good cause for the delay and account for each day of delay. There is no hard and fast rule on what amounts to good cause. Some of the factors established by our Courts to consider in the determination of causes for delay alleged by the applicant have been mentioned by Mr. Kitare in his submission and reproduced in this Ruling. It is worth noting that in addition to the factors mentioned by Mr. Kitare, the applicant must account for all days of delay and must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take. [See the case of **Lyamuya Construction Company Ltd Vs Board of Registered**

**Trustees of Young Women Christian Association of Tanzania, Civil Application No. 02 of 2010, ( unreported)].**

As alluded to earlier in this Ruling, this application seeks an extension of time to review the Ruling of this court that was delivered on 4<sup>th</sup> March 2022, in which this court ordered that the suit should be transferred to Kisutu RM's Court. The court's records reveal that after the applicant's case file was returned to this court from Kisutu RM's Court the applicant herein filed an application for review vide Misc. Civil Application No.537 of 2022 which was struck on 28<sup>th</sup> July 2023 for being incompetent with leave to refile a proper application per the law. To my understanding, the application in hand has been filed following the aforesaid court order. I am inclined to agree with Mr. Kitare that the period between 5<sup>th</sup> September 2022 to 28<sup>th</sup> July 2023 when the applicant lodged the 1<sup>st</sup> application for review has been adequately accounted for in the affidavit in support of this application in paragraphs 3 to 10 inclusive. The copies of the correspondences between the applicant's advocate and this court annexed to the affidavit in support of this application prove that indeed the applicant was not idle. Also, I am inclined to agree with Mr. Kitare that the period from 28<sup>th</sup> July 2023 when the applicant's 1<sup>st</sup> application was struck out to 19<sup>th</sup> September 2023 when this application was filed in court was used for preparation of this application and filing of the same online, bearing in mind the background of this case which involved numerous correspondences. Thus, the delay in filing this application cannot be termed as an inordinate delay.

Additionally, the applicant has shown diligence in prosecuting his case since when it was rejected to be admitted at Kisutu RM's Court. This is proved by the correspondence between the applicant and this court annexed to the affidavit in support of this application. Lastly, if this application is granted the respondent will not be prejudiced in any way since he will have the opportunity to challenge the application for review if he wishes.

In the upshot, this application is granted. The applicant has to file the application for review within twenty-one (21) days from the date of this Order.

Dated this 12<sup>th</sup> day of April 2024



  
**B.K.PHILLIP**

**JUDGE**