

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 84/16 OF 2018

THE GRAND ALLIANCE LIMITED..... APPLICANT

VERSUS

1. MR. WILFRED LUCAS TARIMO 2. MR. DERIC WILFRED TARIMO 3. MS. DOREEN WILFRED TARIMO 4. MRS. IRENE WILFRED TARIMO 5. SNOWCREST & WILDLIFE SAFARIES LT	} RESPONDENTS
--	---	--------------------------

(Application for extension of time within which to file an application
for revision of the Ruling and Order of the High Court of
Tanzania, (Commercial Division) at Dar es salaam)

(Mruma, J.)

dated the 4th day of October, 2017

in

Commercial Case No.9 of 2012

RULING

25th March & 11th April, 2019

LEVIRA, J.A.:

This application by notice of motion is made under Rules 10 of the Tanzania Court of Appeal Rules, 2009, (the Rules). It is supported by an affidavit deposed by James Barnabas Ndika, the Managing Director of the Applicant. The applicant herein is seeking for extension of time within which to file an application for revision of the Ruling and Order of the High Court of Tanzania, Commercial Division. The application is

opposed by the respondents through affidavit in reply duly deposed by Wilfred Lucas Tarimo, the first respondent and judgment debtor.

At the hearing of this application both parties were duly represented. The applicant was represented by Ms. Dora Malaba, learned counsel and the respondents were represented by Mr. Ipanga Kimaay, learned counsel.

Ms. Malaba adopted the notice of motion, affidavit, written submission and the list of authorities. Her submission in support of the application was guided by the decisions in **Tanzania Revenue Authority v. Tango Transport Company Limited**, Consolidated Civil Application No. 4 of 2009 and No. 9 of 2008; **Benedict Mumello v. Bank of Tanzania**, Civil Application No. 12 of 2002; and, **Chang Qing International Investment Limited v. Tol Gas Limited**, Civil Application No. 292/16 of 2016 (all unreported).

The learned counsel submitted that the High Court, Commercial Division at Dar es Salaam on 4th day of October, 2017 delivered a Ruling refusing the applicant to execute his decree in Commercial Case No. 9 of 2012. Instead, the applicant was directed to execute another decree in which it was neither a party nor aware of the existence of the case from which the decree was made. Aggrieved, the applicant applied for

the copies of Ruling, proceedings and the order on the 4th October, 2017 with a view of challenging that decision. However, the said copies were not supplied to the applicant until on 6th March, 2018 when it was already too late. According to the counsel, the said copies were very important in lodging revision application. Immediately after receiving them, on 18/3/ 2018 the applicant lodged application for extension of time as the sixty days required for filling revision application had already expired.

Relying on the decision in **Chang Qing International Investment Limited** (supra), the counsel for the applicant submitted that, failure to file application for revision in time was due to delay in being supplied with necessary documents by the High Court. She opined therefore that, the reason so advanced is a good cause as stated in the case of **Benedict Mumello** (supra) for the Court to grant the application.

The learned counsel went on submitting to the effect that, there is arguable case because the applicant has been refused to execute a decree in which is a party. Instead, it was directed by the High court to execute a decree in which is not a party. Thus, a good cause for extension of time. Regarding the issue as to whether the respondents

will be prejudiced if extension of time is granted to the applicant, the learned counsel was of the firm view that, the respondents will not be prejudiced at all.

Ms. Malaba concluded her submission by praying for the application to be granted, as she believes good cause has been shown.

In reply, Mr. Kimaay, started by adopting affidavit in reply and reply written submission to form part of his submission. He had no problem with the submission made by the counsel for the applicant in regard to the need to show good cause, in application for extension of time and all the authorities relied upon. He however, opposed the application on account that, the applicant has failed to account for each day of delay from the date of receiving the necessary documents to the time of lodging this application. He challenged the counsel for the applicant as to why the application was filed on 20/3/2018, if they received copies of ruling and drawn order on 6/3/ 2018. He thus was of the view that, the period of 14 days delay from the date of receiving the necessary documents to the date of filing the application is not accounted for.

In regard to the principle of arguable matter on point of law as a good cause, the counsel for the respondents supported it while referring

to the decision in **Commercial Case No. 9 of 2012** between the parties in this application.

Submitting on the issue of prejudice to the respondents, Mr. Kimaay was of the opinion that they will be prejudiced in the form of costs and time consumed in court practice while dealing with this matter. Finally, he was of the view that this application is devoid of merit and thus, prayed for the same to be dismissed.

In rejoinder, the counsel for the applicant reiterated her submission in chief. She insisted that they were not supplied with necessary documents in time. Thus, good cause has been shown to warrant extension of time.

I have dispassionately gone through the rival submissions by both sides for me to consider the merit or otherwise of the application. The main issue to be considered is, whether the applicant has been able to advance good cause to justify extension of time. Under paragraph 12 of the affidavit of Mr. James Barnabas Ndika, the applicant states that the decision subject to this application was delivered on 4th October, 2017. In paragraph 14 it is stated that, the applicant was supplied with necessary documents on the 6th March, 2018 vide the letter from the Court of 3rd March, 2018; by then the time to file application for revision

had already expired. According to annexure GL-10 collectively, the applicant made payment for proceedings through Exch. Receipt No. 13466955 on 16/3/2018 and for Drawn Order through receipt No. 18466958 on the same day. I wish to observe that, the applicant's letter to the Registrar requesting for those documents of 4th October, 2017 did not indicate the purpose of requesting for the same.

Having made a thorough perusal of the pleadings, I have come to discover that, although it is stated under paragraph 14 of the affidavit that the supply of requested documents was done on the 6th day of March, 2018; the date that was also mentioned by the counsel for the applicant in her oral submission, the receipts attached provide for a different date, that is 16th March, 2018. The said difference led to what the counsel for the respondents termed as failure to account for each day of delay. However, the date of payment for the proceedings and drawn order should be considered as the date of receiving the said documents. In that case therefore the days start to run from 16th of March, 2018 and not 6th March, 2018 as submitted by the counsel for the applicant.

It is clear thus, that the applicant has not accounted as why the said documents were not collected immediately after receiving the

information that they were ready for collection on 3/3/2018, instead decided to wait until on 16/3/2018. Having collected the same, it also took the applicant four days to lodge this application. Basically, the developed jurisprudence requires the applicant to account for each day of delay as correctly stated by the counsel for the respondents. See for instance, **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, (unreported).**

The above position notwithstanding, in the current matter the counsel for the applicant alleged that the applicant was required by the High Court to execute a decree issued in a matter in which it was not a party. This allegation was opposed by the counsel for the respondents. Little that can be gathered from the record is that, the applicant herein, is not satisfied with the decision of the Commercial Division of the High Court which required the applicant and plaintiff in Commercial Case No. 9 of 2017 to execute her decree through the decree in Commercial Case No. 3 of 2016 in which the applicant was not a party; as vividly seen in annexure LG7 to paragraph 7 of the affidavit. I think this is a matter that requires the attention of the Court. In **Principal Secretary, Ministry**

of Defence and National Service vs. Devram P. Valambia [1992]

T.L.R 182 this Court stated:

*"We think that where, as here, the point of law at issue is the **illegality** of or otherwise of the decision being challenged, that is sufficient importance to constitute "**sufficient reason**," within the meaning of Rule 8 of the Rules for extension of time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand."*[Emphasis added]

The Court went on stating that:

"In our view when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged be established, to take appropriate measures to put the matter and the record right."

Under the guidance of the above established principle, I am satisfied that the applicant has been able to show good cause for extension of time.

In the event, this application for extension of time is granted for the applicant to file an application for revision within sixty (60) days from the date of this decision. No order as to costs.

DATED at **DAR ES SALAAM** this 9th day of April, 2019.

M. C. LEVIRA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



S. J. Kainda
S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL