

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF TABORA
AT TABORA**

DC. CIVIL APPEAL NO 5 OF 2023

(Arising from Misc. Civil Application No 08 of 2020 of the District Court of Tabora)

VICENT CHIMI MASANJA APPELLANT

VERSUS

ALLIANCE FINANCE

CORPORATION LIMITEDESPONDENT

JUDGMENT

Date of Last Order: 18/07/2023


Date of Delivery: 18/07/2023

MATUMA, J.

The appellant herein, Vicent Chimi Masanja filed this appeal against the decision of the District Court of Tabora which dismissed his application for extension of time to set aside a consent judgment.

Briefly, the facts giving the background of the case is that the Appellant sued the Respondent for breach of contract vide Civil Case No. 13 of 2019. The Respondent in his defence also raised a Counter Claim on the said contract. In the cause of hearing the suit between the parties, both parties entered a deed of settlement which was registered as a **consent judgment**.

In the said deed of settlement/consent judgment it appeared that there was some obligations made against a third party one Tata

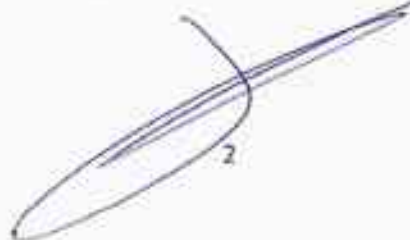


Africa Holdings (Tanzania) Limited. The Appellant found himself in trouble when he tried to execute the consent judgment against the said third party who was not party to the settlement deed or the consent judgment. In that respect the Appellant sought to apply before the trial court to set aside the consent judgment because the same was not executable but at that time he was already out of time to make the requisite application. He thus applied for extension of time to apply for an order to set aside the consent judgment (***Misc. Civil Application No. 8 of 2020***) but the same was dismissed for lack of sufficient cause hence this present appeal on a sole ground that;

"The resident magistrate erred in law and facts to dismiss the Application while the adduced grounds had merits".

At the hearing this appeal, the appellant was represented by M/S Flavia Francis learned Advocate while the respondent was absent without any notice. I decided that the appeal be heard and determined ex-parte.

The learned advocate for the Appellant submitted that the appellant having discovered that the consent judgment was not executable and realized that the same was tainted with illegalities and as a matter of law extension of time to apply for its being set aside ought to have been granted. She further argued that illegality is an enough ground to warrant extension of time. She referred this court to the Court of Appeal decisions in the cases of; ***Patrobert D. Ishengoma versus Kahama Mining Corporation Ltd (Barrick Tanzania Bulyankulu) and 2 Others, Civil Application No. 2/2013***, and ***Oysterbay***



Properties Ltd and Another versus Kinondoni Municipal Council and Others, Civil Revision No. 4/2011.

Having heard the submissions of the learned advocate and gone through the records of the lower Court, I am in an agreement with the Appellant's advocate that indeed the Appellant had adduced sufficient cause for the delay. He was honestly meandering here and there in an attempt to execute the consent judgment only to find that the same was not executable.

The trial court in rejecting the application held that the Applicant had to blame himself in entering into the settlement deed without making thorough investigation and or taking some legal consultation. I find that such observation was not fairly made because it benefited one party to the suit against the other on the same fault by both parties.

In fact the trial court had legal obligation not to register the consent deed which is not executable. I therefore find that the time spent by the Appellant in an attempt to execute the consent judgment amounted to a technical delay which is excusable. I also find that the alleged illegality of the consent judgment to have included a third party and shouldering her with some obligations without affording such party a right to be heard need to be worked upon and justice be done to both parties. That can be reached only if this appeal is allowed for the Appellant to take the the required steps to have the consent judgment checked into its appropriateness. See; ***Lyamuya Construction Co. Ltd Vs Board Of Registered Of Young Women's Christian Association Of Tanzania (Civil Application No. 2 Of 2010).***

Having said all these, I find that the appellant adduced sufficient cause and his application ought to have been granted by the trial court.

I therefore allow the appeal and quash the impugned ruling of the District Court. The Appellant is hereby granted thirty (30) days from today to make the requisite application in the District Court so that the consent judgment is checked into and for the District Court to do the necessary action in accordance to the law.

In the circumstances of this matter, I make no orders as to costs.
It is so ordered.



MATUMA
JUDGE

18/07/2023