

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC. CIVIL APPLICATION NO. 37 OF 2023

(Arising from Civil Case No. 06 of 2023 of the High Court of Tanzania Bukoba District Registry.)

THE BOARD OF TRUSTEES OF NATIONAL

SOCIAL SECURITY FUND..... APPLICANT

VERSUS

KAKOZA KAZIMIRY RUTONDA & 12 OTHERS.....RESPONDENT

EX PARTE RULING

Date of last Order: 24.08.2023

Date of Ruling: 25.08.2023

A.Y.Mwenda, J.

This ex-parte ruling is in respect of the Applicant's application for extension of time within which to file an application for leave to appear and defend in Civil Case No. 06 of 2023. It is made under Section 14 (1) of the Law of Limitation Act, [Cap 89 R. E 2019] and any other enabling provisions of the laws it is also supported by an Affidavit affirmed by Ms. AISHA SALEHE MOHAMED, Learned State Attorney.

When this matter was called on for mention, both parties were represented. The Applicant was represented by Ms. AISHA SALEHE MOHAMED, learned State Attorney while Mr. DANSTAN MUJAKI holding brief for Mr. BARAKA DISHON, 1and learned counsel for the respondents. Having introduced himself, Mr. DANSTAN

MUJAKI informed the Court that they were served with the application papers in the same morning and as such, he prayed for at least fourteen days (14) time to file the respondent's counter Affidavit. Since his pray was not opposed, the Court ordered him to file the respondent's Counter Affidavit by 16.08.2023. Following such order, the Court adjourned the matter to 22.08.2023 for hearing.

When the matter came for hearing (on 22.08.2023), neither the Respondents nor their advocate appeared in Court. Ms. AISHA SALEH MOHAMED who appeared for the applicant informed the court that the respondents have not complied to the Court's order which directed them to file their Counter affidavit by 16.08.2023. The learned State Attorney was of the view that since time to file counter affidavit has passed, then that, by itself entail the respondents are not opposing it. On that basis she prayed the hearing of this application to proceed ex parte against the respondents. On that basis, since to date, the respondents counter affidavit is not filed as ordered, and neither the respondents nor their advocate appeared in court, the court found substance on the prayer by the Learned State Attorney and as such an order for ex parte hearing was issued.

Before submitting in respect of this application, the Learned State Attorney prayed the affidavit accompanying the present application to be adopted as part to her oral submission. She then commenced by submitting that under Order V Rule 3 of the Civil Procedure Code, a summons should be accompanied by a copy of the plaint and other documents regarding the future conduct of the suit. According to

her, in the main suit, the respondents served the applicant with the plaint only without any attachments which led to some difficulties to know the full details of the claim. She stressed that failure to serve the respondents with attachment is fatal and constitute a good cause for extension of time. To support this point, she cited Order V RULE 3 of Civil Procedure Code [CAP 33.R.E.2019].

In her further submission, the learned State Attorney pointed out that the main suit i.e., Civil Suit No. 06 of 2023 is tainted with illegality for being filed prematurely. She asserted that the Respondents ought to have firstly, issued a 90 days' notice of intention to sue the Government as provided for under Section 6(2) of the Government Proceedings Act, [Cap 5 R.E. 2019]. According to her, this alone is sufficient reason for extension of time. In support to this point, she cited the case of THE ATTORNEY GENERAL VERSUS EMMANUEL MARANGAKISI (AS THE ATTORNEY OF ANASTANSIOUS ANAGNOSTOU) & 3 OTHERS, CIVIL APPLICATION NO.138 OF 2019, CAT(Unreported) and THE PERMANENT SECRETARY MINISTRY OF DEFENSE AND NATIONAL SERVICE V. DEVRAM VALAMBHIA [1992] TLR 182. She then wound up her submission with a prayer beseeching this Court to allow this application. That marks the end of the summarized submissions by the Learned State Attorney in support of the present application.

At the outset it is apposite to point out that granting or refusing extension of time is the discretion of the Court. However, such discretion must be exercised judiciously depending on the circumstances of a particular case such as whether

the Applicant has demonstrated good cause to support the application for extension of time. See FARIDA F. MBARAK & 1 ANOTHER V. DOMINA KAGARUKI & 4 OTHERS, CIVIL REFERENCE NO. 14 OF 2019, CAT (Unreported). In providing answers as to what amount to good cause, the Court of Appeal in the case of LYAMUYA CONSTRUCTION COMPANY LIMITED V. BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO.2 OF 2010 (Unreported) enlisted a number of factors to be taken into account as follows:

- “(a) The applicant must account for all the period for delay.
- (b) The delay should not be inordinate.
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and
- (d) If the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.”

That being the legal position regarding factors for consideration in application for extension of time, the issue for determination in the present application is whether the applicant has advanced good cause.

During submission in support of this application, the Learned State Attorney raised illegalities as a ground for extension of time. Firstly, she quarried the respondents’

failure to annex the necessary document to the plaint served to the applicant and secondly, that the main suit i.e., Civil Case No. 6 of 2023 is filed prematurely as it is not preceded by a statutory 90 days' notice of intention to sue the government.

I have put the said points under scrutiny and noted the following.

Regarding the argument by the learned State Attorney that Civil Case No. 6 of 2023 was filed without a prior 90 days' notice of intention to sue the Government, a thorough perusal to the appendices to the respondents' plaint failed to see any. Since the record are silent as to whether the notice of intention to sue was issued before filing the suit or not, this court is of the view that the same need be dealt with in the main suit. On that basis this Court is of the view that the same is a good cause for extension of time. Since this point can conclude the matter at hand, this court found no need to deal with the first illegality regarding failure to attach necessary documents in the plaint.

From the foregoing reasons, the applicant is granted extension of time to file an application for leave to appear and defend in a summary suit, Civil Case No. 6 of 2023. The same should be filed within 14 days from the date of this ruling.

It is so ordered.



A.Y. Mwenda

Judge

25.08.2023

Ruling delivered in chamber under the seal of this court in the presence of Mr. Scurious Bukagile learned counsel holding brief for Ms.Aisha Salehe learned State Attorney for the Applicant in the absence of the respondents.




A.Y. Mwenda

Judge

25.08.2023