

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 280 OF 2023

(Originating from Civil Case No. 156 of 2019)

BETWEEN

MONEY EXPERTS LTD APPLICANT

VERSUS

SAMNA (T) INVESTMENT LIMITED 1ST RESPONDENT

SAMWEL SULE NAKEI 2ND RESPONDENT

SHAMSA SALIM HAMDUNI 3RD RESPONDENT

Date of last order: 03/10/2023

Date of ruling: 06/10/2023

RULING

A.A. MBAGWA, J.

This is an application for extension of time within which to file an application to set aside the order and decree of this Court (Hon. J.A. De-Mello J.) dated 16th July, 2020. The application is brought by way of chamber summons made under section 14 of the Law of Limitation Act. In



addition, the application is supported by an affidavit affirmed by Rajesh Kumar Shivji Aggarwal. In contrast, the application is opposed by the respondents through a counter affidavit of Samwel Sule Nakei.

In brief, the facts of the matter as gleaned from the depositions provide a chequered history. The applicant instituted a case to wit, Civil Case No. 156 of 2019 against the respondents. The respondents defaulted to appear to defend their case and to crown it all they did not file written statement of defence. As such, on 16th July, 2020 when Civil Case No. 156 of 2019 was called on in Court, Hon. J.A. De-Mello Judge, in terms of Order VIII Rule 14(i) of the Civil Procedure Code, entered judgment in favour of the applicant on account of the respondents/defendant's absence.

Consequently, the applicant filed execution application via Execution No. 16 of 2021 for executing its decree. However, on 2nd day of November, 2021, this Court (before Hon. A.R. Mruma J.) declined to grant the application due to errors which were observed in the decree. In addition, the applicant was advised to take the appropriate court to rectify the identified errors. The applicant thought to remedy the errors through review of the decree as such, the applicant, through Misc. Civil Application No. 293 of 2022 filed an application for extension of time within which to file the review. Thus,



on 6th October, 2022 this Court (before Hon. Mwangi J) granted an extension of time to file review.

Having obtained extension of time, the applicant through Misc. Civil Application No. 465 of 2022 filed a review application. Nonetheless, the Court (Hon. Bwegoge J) on 31st day of March, 2023 refused to allow the review application on the ground that there was no judgment in law which this Court could review in terms of Order XLII rule 1 of the Civil Procedure Code.

It is against this background, the applicant has thought of setting aside the erroneous order and decree dated 16th July, 2020 in Civil Case No. 156 of 2019. However, since the time for filing an application to set aside the order and decree has lapsed, the applicant has knocked the doors of this Court seeking extension of time.

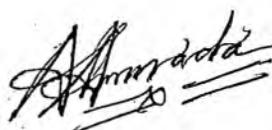
In the supporting affidavit, the applicant contends that the order and decree sought to be set aside are tainted with illegalities and therefore not capable of execution. She further states that the alleged errors were inadvertently committed by the trial judge. In rebuttal, the respondents through the affidavit of Samwel Sule Nakei strongly contested the



applicant's averments on the ground that there are no sufficient causes to warrant extension of time.

When the matter was called on for hearing, Mr. Makoli Lucas Makoli, learned advocate appeared for the applicant whereas the respondents were represented by Mr. Moses Kaluwa, learned advocate.

Submitting in support of the application, Mr. Makoli told the Court that section 14 of the Law of Limitation Act on which the application is premised requires an applicant to advance sufficient grounds. He continued that good cause has not been defined but there are several decisions providing for factors to be considered. He cited the case of **Lyamuya Construction Company Ltd vs. Board of registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT at Arusha and argued that the above case laid down some factors to be considered in granting extension of time. The learned counsel submitted that existence of illegality in the decision sought to be impugned is one of the grounds for extension of time. He argued that the order and decree of the Court dated 16th July, 2020 in Civil Case No. 156 of 2019 are tainted with illegalities due to the errors committed by the Court. He clarified that plaintiff/applicant was not heard as he was not given opportunity to prove



its case instead the trial Judge simply entered judgment in favour of the plaintiff/applicant upon the defendants/respondent's absence. The learned counsel lamented that the course taken by the trial Judge was contrary to the dictates of Order VIII Rule 14 of Civil Procedure Code. On the basis of the applicant's affidavit along with the submissions, the learned counsel beseeched the Court to grant extension of time.

In rebuttal, Mr. Kaluwa learned advocate strongly resisted the application. He commenced his submission by remarking that extension of time is entirely within the discretion of the Court and the same must be exercised judiciously. On this, he cited the case of **Muruo Saitore Laizer vs Kagera Sugar Limited**, Labour Revision No. 02 of 2022 HC at Bukoba.

While referring to the case of **Lyamuya Construction Company Ltd (supra)**, Mr. Kaluwa strongly submitted that the applicant must account for all the period of delay. On this, the learned counsel was opined that applicant has failed to account for delay. The respondents' counsel referred to paragraph 9 of the applicant's affidavit and submitted that the last decision of the court was delivered on 31st March, 2023 but the instant application was filed on 6th June, 2023 and no reasons for delay have been



provided. He concluded that the delay is inordinate and the applicant did not account for it.

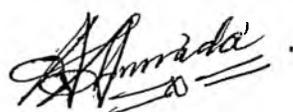
In addition, Mr. Kaluwa was of the view that there is no illegality in the order and decree dated 16th July, 2020 in Civil Case No. 156 of 2019.

In fine, it was the learned counsel's submission that the applicant has not shown good cause to warrant grant of extension. He prayed for dismissal of the application.

Having canvassed the rival submissions and upon appraisal of the depositions made by the parties, the pertinent issue for determination is whether the applicant has demonstrated sufficient cause to warrant extension of time.

As rightly submitted by the respondent's counsel, grant of extension of time is exclusively discretion of the Court. See also the case of **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam. However, in exercising this discretion, the court is guided by one factor namely, whether there are sufficient grounds.

It is a trite law that there is no fast and hard rule as to what amounts to good cause rather, good cause is determined upon consideration of the

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obtaining circumstances in a particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar Es Salaam. Besides, in the case of **Laurent Simon Assenga vs Joseph Magoso and Two Others**, Civil Application No. 20 of 2016, CAT at Dar es Salaam, the Court, at page 3, had the following to say;

'In determining an application under Rule 10, the issue that has to be resolved is always, whether, the applicant has shown good cause for extension of time. What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case'

As rightly submitted by the applicant's counsel although there is no decisive definition of sufficient cause, courts, through case laws, have prescribed various considerations which may be taken into account for establishing sufficient cause. The factors include length of delay involved, reasons for delay, the degree of prejudice, if any, that each party is likely to suffer, diligence of a party, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of



appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bweshha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372 of 2018, CAT at Dar Es Salaam.

In the instant matter, there is no gainsaying that the alleged errors were committed by the Court. It is further common cause that owing to the said errors, the applicant has been unable to execute the decree. In addition, since 2021, through Execution No. 16 of 2021, the applicant has been in court in a bid to attain her justice.

Thus, considering the diligence which the applicant has demonstrated in trying to rectify the errors, and alive to the overriding objective principle which requires the court to focus on substantive justice, I find sufficient grounds to grant extension of time.

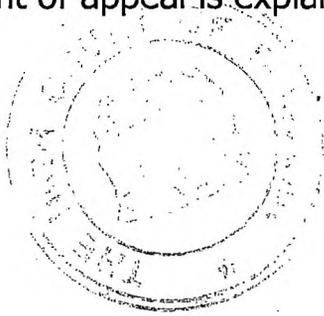
As I wind up this ruling, I find it apt to remark that whether the intended application for setting aside the order and decree is meritorious, is not the function of the Court in this application.



On all the above account, this application is allowed. The applicant is given thirty (30) days from the date of this ruling to file the intended application for setting aside the order and decree of this Court (Hon. Judge J.A. DeMello) dated 16th July, 2022. Each party should bear its own costs.

It is so ordered.

The right of appeal is explained.

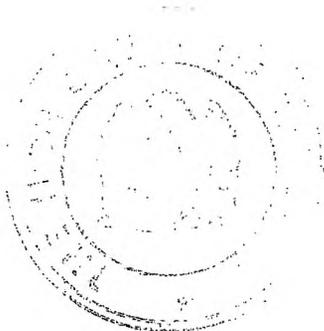


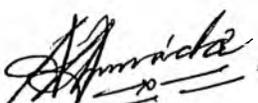

A.A. Mbagwa

JUDGE

06/10/2023

Court: This ruling has been delivered in the presence of Mr. Moses Kaluwa, learned counsel for the respondent who was also holding brief of Makoli Lucas Makoli, learned counsel for the applicant this 6th day of October, 2023.




A.A. Mbagwa

JUDGE

06/10/2023