

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 95 OF 2005**

**UNION OF TANZANIA LOCAL OIL COYS.....RESPONDENT/PLAINTIFF  
VERSUS**

**1.TANZANIA ASSOCIATION OF OIL  
MARKETING COMPANIES**

**2.SGS (T) SUPERINTENDENCE LTD.....APPLICANT/DEFENDANT**

**Counsel: Mr. Octavian for Applicant  
Mr. W. Chipeta for Respondent**

**R U L I N G**

**Dr. Bwana, J:**

1. The Respondent filed this suit against the two Defendants on 3 October 2005. Together with the suit, an application was also filed under a Certificate of Urgency, seeking injunctive orders. That application was heard and some orders granted.
2. At all material times of the hearing of the application, the second defendant cum Applicant never entered appearance, until much later. On 2 November, the Respondent filed an application for default judgment against the said second defendant for failure to file a Written Statement of Defence.
3. However this application was vacated on 9 November when the parties appeared before me. Instead, it was preferred the parties argue the applicant's request for extension of time to file Written Statement of Defence. They agreed to do so by way of Written Submissions. They have done so now.

4. Both parties rely on the provisions of the Civil Procedure Code (the CPC) governing the subject. On the part of the Applicant, he relies on the provisions of Order VIII R 1 (2) of the Civil Procedure Code as amended by GN 422 of 1994. He also argues that since he was not served with summons for filing the defence, the service of the plaint only did not conform to the provisions of Order VR 3 of the Civil Procedure Code.
5. The Respondent differs. He insists that a copy of the summons were served to the Applicant together with the plaint. He also cites Order VIII R 1 (2) of the Civil Procedure Code as well as Order VR 1. and Order VI R 2 (1) (a) of the Civil Procedure Code.
6. It is not in dispute that the Applicant did not file its defence within the 21 days as prescribed by law. It did so within 35 days, thus before the expiry of another 21 days. For its application for extension of time to file defence to succeed, the Applicant must show good cause. In the instant application the said good cause is said to be two fold. First, that the plaint served on the second defendant did not include summons for filing defence. Although this claim is hotly controverted by the Respondent, in the interest of justice, I would agree with the Applicant. The second good cause raised is that at the time Counsel for the Applicant was instructed, he was bereaved hence could not attend to this assignment. I consider that also to be good cause.
7. I am also mindful of the fundamental right of a party to a suit to be heard. At this early stage of these proceedings, I strongly believe that allowing the applicant to file its defence will not cause injustice to the other parties herein.
8. Therefore this application is allowed. The second defendant/applicant is granted extension of time to file its Written Statement of Defence. The

same to be filed within four days from the date hereof. It is accordingly ordered. No order as to costs of this application.

Dr. S. J. Bwana

**JUDGE**

2/12/2005

558 words