

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

MISC. COMMERCIAL APPL. No. 119 of 2022

HON. ATTORNEY GENERAL.....APPLICANT

VERSUS

AYOUB-FARID MICHEL SAAB.....RESPONDENT

Date of Last Order: 08/12/2022

Date of Ruling: 28/02/2023

RULING

NANGELA, J.:

This is an application for extension of time. The Applicant brought it under section 14 (1) of the Law of Limitation Act, Cap.89 R.E 2019, Section 17 of Arbitration Act, [Cap 15 R.E 2020], Section 95 of the Civil Procedure Code [Cap 33 R.E 2019], Rule 2 (2) of the Commercial Court Rules and any other enabling provisions of the law. The Applicant's chamber summons was supported by an affidavit of one George N. Mandepo and the Applicant seeks for the following orders:

1. That, this Honourable Court be pleased to extend time within which the Applicant can file and register a foreign order delivered in respect of ICSID Case No. ARB/19/8 between Ayoub-Michel Saab vs United Republic of Tanzania;

2. Any other order that this Honourable Court may deem fit and just to grant.
3. Costs of the application.

On the 8th of September 2022, the Respondent filed a counter affidavit to contest the application. A reply thereto was filed on 16th September 2022. When the parties appeared before me on the 18th October 2022, the Applicant enjoyed the services of Miss Neisha Shao and Miss Ghatti Museti, learned State Attorneys, while Mr Seni Malimi, learned advocate, appeared for the Respondent. Before me was a prayer, which I readily granted, that matter be heard by way of written submission. I did issue a scheduling order of filing such submission and I am glad that the parties fulfilled their obligations and filed their written submissions in line with the filing order.

In his submission, Mr David Kakwaya, a Principal State Attorney who prepared the Applicant's written submissions, submitted that, as per the law, an application to file and register a foreign award is to be made within 6 months from the date of the award. He cited Part III item No. 18 of the schedule of the Law of Limitation Act, Cap 89 R.E 2019 as his point of reference. He submitted, however, that, the Applicant herein failed to meet that condition due to various reasons.

In particular, Mr. Kakwaya submitted that, the Applicant's delay was occasioned by the fact that, the Respondent had not complied with the orders given by the ICSID. He submitted that; the Respondent was instead alleging about financial difficulties

arising from economic instability of his country-Lebanon. He contended that, on that account, the Applicant afforded the Respondent enough time believing that the latter would effect payment as shown in paragraph 17 of the Applicant's affidavit.

He submitted as a reason for the delay, that, the Applicant spent time in investigating the location of the Respondent's properties for the purposes of initiating enforcement proceedings. He stated that, the Respondent being a person carrying out his businesses in more than three countries, a due diligence had to be carried out in different countries and, that, such a process, as shown in paragraph 19 of the Applicant's affidavit, took longer time, hence, the delay.

In his further submission, Mr. Kakwaya contended that, since the Applicant's efforts were meant to make sure that the Respondent pay willingly as stated above, a delay in filing this application, was not one resulting from negligence on the part of the Applicant. He argued that, in an application for extension of time, one has to establish a good cause, which, if it exists, the application will, based on the discretion of the Court, be granted. He contended that, in most cases, such good cause depends on the circumstances of each particular case.

To bolster his submission, he relied on the cases of **Regional Manager, TANROADS Kagera vs. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 CAT (Unreported) and in the case of **Lyamuya Construction**

Company Limited vs. Board of Trustees of Young women Christian Association of Tanzania, Civil Application No. 2 of 2010 CAT (Unreported). From the above authorities, it is a clear settled principle that, there must be sufficient or good reasons and, the applicant must account for all period of delay. Besides, the delay complained of should not be inordinate.

In his submissions, Mr. Kakwaya submitted that, by and large, the Applicant has shown diligence in pursuing the matter which shows sufficient reasons to grant the prayer. He submitted that if the application is not granted, the Applicant is going to suffer irreparable loss unlike the Respondent who is not going to suffer any prejudice. To strengthen his position, he brought to this Court's attention the case of **Benedict Shayo vs Consolidated Holdings Corporation as official receiver of Tanzania Film Company** Civil Application No. 366/01/2017 CAT (unreported). He urged this Court, therefore, to allow this instant application.

For his part, Mr Seni Malimi, learned advocate for the Respondent, opposed the granting of the prayers sought in this application. He contended that, no sufficient reasons were adduced by the Applicant. Adopting the contents of the counter affidavit filed in this Court, he submitted that, from the 24th of June 2021 when the decision was delivered to the date when the application was filed on 11th July 2022 more than a year, the Applicant has not been able to account for the delay. Commenting on the powers of granting extension, it was Mr. Malimi's views

that, this Court's discretion can only be exercised where there is sufficient reason.

To cement on his point, he cited the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported) as well as the case of **Shanti vs. Hichonda** (1973)EA 20, as well in the case of **Vodacom Foundation vs. Commissioner General, TRA**, Civil Application No. 107 of 2017 CAT (unreported). In view of his submissions, he urged this Court to dismiss the application with costs.

I have taken time to carefully consider the rival arguments by the learned counsel for the parties. The question I am supposed to address is whether the applicant has disclosed sufficient reasons for the delay in lodging the application for which an extension of time is sought. The principle stands to be that, there must be sufficient reasons or cause if an application of the like nature is to be granted.

Besides, any delay even for a day must be accounted for and there is a plethora of cases which have cemented the requirement of accounting for every day of delay. Examples include the cases of **Bushiri Hassan vs. Latifa Lukio, Mashayo**, Civil Application No. 3 of 2007 (unreported), **Karibu Textile Mills vs. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016(unreported),and **Lyamuya Construction Company Ltd**

vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported).

In determining issues regarding extension of time, however, Nsekela JA (as he then was), stated, in the case of **Tanga Cement Company Limited vs. Jumanne D. Massanga and Amos A. Mwalwanda, Civil Application No. 6 of 2001**, (unreported), that:

“from decided cases a number of factors have to be taken into accounting whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant.”

In the case of **Mwananchi Insurance Company Ltd vs. The Commissioner of Insurance**, Misc. Commercial Application No. 264 of 2016 (unreported), this Court dismissed the Applicant's application because there was no proof as to why there was delay on the part of the Applicant. That means, therefore, that, where proof is provided, the Court may consider to grant the prayers sought.

In this application, the Applicant has narrated how it was expected that the Respondent would comply with the orders of the Tribunal and how the Applicant acted reasonably and favourably towards accommodating the concerns of the Respondent. In my view, that reason is sound enough to convince

this Court to exercise its discretion since it neither demonstrate that, the Applicant was not negligent nor undiligent in any way possible.

It follows, therefore, and, based on the factual circumstances and reasons disclosed in the affidavit and reply affidavit of the Applicant, there is a need to grant the Application and allow the Applicant to file and register the ICSID Award out of time.

In the upshot, this Court settles for the following orders:

1. That, this application is hereby granted with costs.
2. The Applicant to file his application within 14 days from the date of this ruling.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 28th DAY OF
FEBRUARY 2023**



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DEO JOHN NANGELA
JUDGE