

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

**MISC. COMMERCIAL APPLICATION NO. 299 OF 2017
(Originating from Commercial Case No. 87 of 2013)**

AFRISCAN GROUP (T) LTD **APPLICANT**

VERSUS

SAID MSANGI **RESPONDENT**

RULING

Date of the Last Order: 15/01/2018

Date of the Ruling 08/02/2018

SEHEL, J.

This is a ruling on points of law raised by Counsel Mbamba, representing the respondent against the applicant's application for departure and amendment of scheduling order and for an extension of time within which to finalize the main suit, Commercial Case No. 87 of 2013. The applicant preferred his application under Rule 32 (3) of

the High Court (Commercial Division) Procedure Rules GN 250 of 2012 (hereinafter referred to as "the Rules") and it is supported by an affidavit of Rutabingwa, counsel for the applicant.

Counsel for respondent essentially raised two main points of law. The first objection was to the effect that the Court has no jurisdiction to entertain the present application as the prescribed time of 10 to 12 months expired way back from the date the suit was instituted in 2013. He reasoned that the wording of Rule 32 (2) of the Rules is couched in such a manner that once the period of time prescribed under the Rules then the Court has no jurisdiction to extend it to any further period. He said the wording used in Rule 32 is almost similar to Order VIII Rule 1 (2) of the Civil Procedure Act, Cap. 33 (hereinafter referred to as "CPC") that no further extension shall be allowed after the expiry of 42 days. The counsel did not have any authority with him but he promised to bring one which he did. The authority brought is a case of Tanzania Harbours Authority Vs Mohamed R. Mohamed, Civil Appeal No. 80 of 1999 (Unreported). He argued that according to judicial interpretation of statutory provisions if the court has judiciously

interpreted a provision which is similar to the one at issue then such interpretation should be taken to be the standard interpretation of the law. On this submission, the counsel supplied the court with the decision of the Court of Appeal in the case of **Robert Edward Hawkins and Another Vs Patrice P. Mwaigonole**, Civil Application No. 109 of 2007 (Unreported) where it was stated by Rutakangwa, JA (as he then was) as follows: "It is well settled now, that if two statutes are in pari materia, any judicial decision as to the construction of one is a sound rule of construction for the other."

It was argued by counsel Mbamba that the provision of the law which the applicant invoked in moving the Court to grant his prayers are not relevant since Rule 32 (3) of the Rules is applicable in an oral application while the present application is not orally made. He further contended that sub-rule (3) is subjected to sub-rule 2.

A reply submission was done by way of written submission where it was acknowledged by counsel Rutabingwa that Rule 32 provides for the lifespan of commercial cases and that rule 32 (3) deals with extension of lifespan where any party can apply. It was counsel's

submission that since the suit was at the stage of hearing defence case then it is upon the defendant to seek extension of the lifespan lest judgment should be entered against the defendant. He further submitted the plaintiff could not make oral application within the time prescribed by the law because on 28th August, 2017 the case was fixed to come for hearing on 2nd November, 2017 almost after a lapse of a period of more than sixty five days way beyond the thirty days within which the applicant could have make the oral application. Regarding jurisdiction, the counsel distinguished the cases cited by the counsel for defendant in that the case of Tanzania Harbours (Supra) dealt with the issue of failure to file written statement within the prescribed time while that of Robert Edward (Supra) dealt with filing of a supplementary record of appeal. Counsel Rutabingwa contended that the Court has jurisdiction to grant several extensions of lifespan as held in Nazira Kamru Vs MIC Tanzania Limited, Civil Appeal No. 111 of 2015 (Unreported). He thus prayed for the objections to be dismissed.

In rejoinder it was insisted that the words appear in Order VIII Rule 3 of CPC as explained in the case of Tanzania Harbours (Supra) are similar to Rule 32 (2) of the Rules in that the extension of the lifespan cannot be made more than one year. To the counsel's view once the lifespan expires then the suit becomes invalid without regard to who has been at the centre of the delay.

From the counsels' submissions it is not disputed that the Rule 32 (3) only prescribes for the application for extension of time of the lifespan to be made orally within 30 days prior to the expiration of the lifespan. It is also not disputed that there had been numerous extensions of the life span of the suit. It is not in contention that the present application was filed on 19th day of September, 2017 prior to the expiration of the last extension of the lifespan which was set to expire on 4th November, 2017. It is however urged by the counsel for the defendant that since Rule 32 (2) of the Rules prescribed for a limited period within which to extend time then this Court has no jurisdiction to extend the period beyond that prescribed by the Rules and that the provision invoked by the applicant is not relevant

provision of the law. In that respect I am invited to determine whether this Court has jurisdiction and whether the invoked Rule 32 (3) of the Rules is the appropriate rule. I will combine the arguments for an obvious reason that they are intertwined and my starting point is to reproduce the *rule in extensio* in order to appreciate the arguments fronted by the counsels.

Rule 32 of the Rules provides:

"32 (1) Except for circumstances not provided under these Rules, the provision of Order VIIIA and Order VIIB of the Code shall apply in determining speed track of commercial cases.

(2) All commercial cases shall proceed and be determined within a period of ten months from the date of commencement, and not more than twelve months.

(3) Thirty days before the expiry of the time prescribed under sub rule (2), any party to the proceedings may orally apply to the Court for extension of lifespan of the case, and the Court may upon sufficient reasons adduced grant the application and the

party in favour of whom the extension is made shall bear the costs of such extension, unless the Court directs otherwise".

It follows then that Sub-rule 2 of the Rules puts the time limit within which the trial of the commercial case has to be tried and finalized. The limit provided range from ten to twelve months from the "date of commencement". Numerous authorities of this Court has stated that the life span stipulated under Rule 32 (2) of the Rules has to be reckoned from the date of presentation of the plaint or lodging of the plaint (See the cases of **Sinyoma Company Ltd Vs. Bulyanhulu Gold Mine Ltd, Commercial Case No. 30 of 2013** and **FBME Bank Ltd Vs. Lupembe Tea Estate Co. Ltd and 2 Others**, Commercial Case No. 59 of 2012 (both unreported)). This means that ten and twelve months provided under sub-rule 2 of the Rules runs from the date of the presentation of the plaint. The time so provided can be extended by making an application within thirty days before the expiration of the prescribed time under sub-rule 2, upon giving sufficient reason (See Sub-rule 3 of the Rules). The time prescribed under sub-rule 2, as I said, ranges from ten to twelve months from the date of the presentation

of the plaint. Though sub-rule 3 gives a period of thirty days within which to make an application for extension of the life span, it says that the right to make the application is limited to the first ten or twelve months from the date of the institution of the suit. However, the Rules are silent on the right cause to be taken by the parties when they fail to make the application for extension of time within the prescribed period of thirty days before the expiration of the lifespan. They are also silent on the course to be taken by this Court when the life span of the suit expires.

It should be borne in mind that the policy behind the enactment of Rule 32 of the Rules is for expedition of hearing and determination of commercial cases so that the goal to speedy administration of justice would be achieved. It should be further borne in mind that in administering the Rules, Court shall have due regard to the need to achieve substantial justice to the parties to litigation. This position is provided so under Rule 4 of the Rules.

The need to do substantial justice is further echoed by the Court of Appeal of Tanzania, now and then, in its various decisions amongst

them is the case of **Nazira (Supra)**. I am alive that the Court of Appeal of Tanzania was dealing with Rule 4 of Order VIII A of the Civil Procedure Act, Cap. 33 but the same wisdom can be applicable to the matter at hand when it stated:

“We have taken sometime to closely look at the wording of the Rule 4 of Order VIII A of the CPC which on its opening phrase states that once a speed track has been set-“no departure from or amendment of such order shall be allowed”-but soon thereafter the same rule provides for relief when time overtakes the agreed speed track-“unless the court is satisfied that such departure of amendment is necessary in the interests of justice”. We think that the words “in the interests of justice” under Rule 4 implies that the speed tracks identified under Rule 3 of Order VIII A of the CPC are not cast in iron. Interests of justice may justify extension of speed track.”

Further in the case of **D.T. Dobie (Tanzania) Ltd. versus Phantom Modern Transport (1985) Ltd., Civil Application No. 141 of 2001 (Unreported)**, the Court of Appeal of Tanzania emphasized that: –

"It has always been that rules of procedure are handmaids of justice and I take this to mean that they should facilitate rather than impede decisions on substantive issues".

It follows then that Rule 32 of the Rules, a rule of procedure, though it does not apply in subsequent applications but its work is intended to fast track the hearing of the commercial cases, and the plaintiff cannot be denied an opportunity simply because the rule is salient on the subsequent application. Since I have found that Rule 32 is not applicable in subsequent application, then I could have as well strike out the application and let the Plaintiff make his application properly under Rules 2 and 4 of the Rules and Section 95 of the Civil Procedure Act, Cap. 33. However, such a step will unnecessary prolong the conclusion of this matter since the proceedings show the case was instituted way back in 2013 and, as rightly submitted by counsel Rutabingwa, the Plaintiff was not the sole causer for the delay of the conclusion of the suit. Some adjournments were at the instance of the defendant.

In the case of **Liquidator, Prosperity Life Insurance Tanzania Limited Vs. Tarime Goodwill Foundation Health Sevices, Huruma Watoto**, Misc. Commercial Application No. 12 of 2015 (Unreported-HC) this Court acted suo moto for the interest of justice, and extended the life span of the case to 48 months from the date the lifespan of the case expired. For the interest of justice, I decide to invoke my inherent powers provided under Rule 4 of the Rules and Section 95 of the Civil Procedure Act, Cap. 33 by extending the lifespan of Commercial Case No. 87 of 2013 to another five months to be reckoned from 4th November, 2017. Costs shall abide to the main suit. Let the main suit proceed to the stage it reached for hearing of the defence case. It is so ordered.

Dated at Dar es Salaam this 8th day of February, 2018.



B.M.A Sehel

JUDGE

08th day of February, 2018.

