

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 129 OF 2017**

**PIMAK PROFESYONEL MUTFAK**

**LIMITED SIRKETI** .....

**PLAINTIFF**

**Versus**

**PIMAK TANZANIA LIMITED** .....

**FARHIA ABDULAH NOOR** .....

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

**RULING**

*Date of the Last Order: 15/12/2017*

*Date of the Ruling 09/02/2018*

**SEHEL, J.**

This is a ruling on oral application made by counsel Wawa representing the Plaintiff that the Plaintiff be granted an extension of time of ten days within which to make a deposit as security for costs. He said the Plaintiff failed to deposit the same as it turned out the banker which anticipated to obtain bank guarantee no longer in existence.

Counsel Lyimo strongly objected to the prayer arguing that this court Order was made on 15<sup>th</sup> December, 2017 whereby Plaintiff was ordered to

  
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deposit a bank guarantee to this Court within six weeks from the date of ruling and that failure of which the suit will stand as dismissed. He therefore prayer for the suit to be dismissed as provided by Order XXV Rule 2 of CPC.

In rejoinder it was insisted that the calamities was unfortunate and that Plaintiff is still able to make the deposit as ordered.

As I said, the court is invited to determine as to whether it should grant the prayer for an extension of time for furnishing security for costs. It be recalled, as aptly submitted by counsel Lyimo, that the Order of this Court made on 15<sup>th</sup> day of December, 2017 is for the Plaintiff to deposit in Court the bank guarantee of Tshs. 45 Million as security for costs within six weeks from the date the order was made. The Court further stated that failure of making such a deposit the suit shall stand as dismissed.

The Order for security for costs was made under Order XXV Rule (1) of CPC. Further Order XXV Rule 2(1) of CPC provides that in the event no security is furnished within the time fixed then the Court shall make an order dismissing the suit unless the Plaintiff is permitted to withdraw the suit. From the counsel's submission, no security for costs has been

furnished and the reason advanced is that the bank is closed. Therefore, it is on record that no security has been furnished within the stipulated <sup>time</sup> ~~the~~ fixed by the Court. Consequently, in terms of Order XXV Rule 2(1) of CPC I do hereby proceed to dismiss the suit with costs as there is no prayer for withdrawal is made before this Court.

It is so Ordered.

DATED at Dar es Salaam this 21<sup>st</sup> day of February, 2018.



A handwritten signature in blue ink, appearing to read 'B.M.A Sehel'.

B.M.A Sehel

JUDGE

9<sup>th</sup> day of February, 2018