

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

**MISC COMMERCIAL APPLICATION NO 100 OF 2017**  
(Arising from Commercial Case No 152 of 2016)

**BETWEEN**

INDEPENDENT POWER TANZANIA LIMITED -----APPLICANT

AND

TOTAL TANZANIA LIMITED -----RESPONDENT

**RULING**

**SONGORO, J**

By a way of chamber application Independent Power Tanzania Limited the applicant filed an application applying for a court order to extend time within which the applicant may file a Written Statement of Defence. The applicant application was made under Section 14(1) of the Law of Limitation Act Cap 89 and Rule 4 of the High Court Commercial Division Procedure Rules GN 250 of 2012 and supported by an affidavit of Parthiban Chandrasakaran the director of operation of the applicant company.

In response to the application Total Tanzania Limited, the respondent filed a counter affidavit sworn by Mariam Semlangwa, Learned Advocate of respondent and opposed the application on the ground that, the applicant did not cite enabling provisions of the law. So the application ought to be dismissed. Thus in the light of the application and response of the respondent the court invited both parties to pursue the application. So Mr Balomi Learned Advocate appeared for the applicant; while Ms. Miriam Semgalawe appeared for the respondent.

In pursuing the application Mr Balomi indicated that, he is relying on skeleton argument and basically their application is based under Section 14(1) of the Law of Limitation Act Cap 33 [R.E 2002]. Then the Counsel indicated that, the applicant is applying for an extension of time to file a written statement of defence because they delay to file it on 20<sup>th</sup> February 2017 within the requisite time of 21 days

On the reason for the delay in filing a written statement of defence within prescribed period, the applicant counsel indicated it was due to the fact that, Board Members of the applicant company who are duly authorised to sign the pleadings including a written statement of defence are residing outside Tanzania. So the applicant unable to file the written statement of defence within the prescribed statutory time.

Clarifying his point in his submission Mr, Balomi pointed out to the Court that, Board Members who are supposed to sign the written statement of defence resides in South Africa. Further the applicant counsel explained that, after the expire of the time limit of filing the written statement of defence, the applicant had to wait until the suit is called for necessary orders, so that, he may apply for leave to file an application for extension of time.

The counsel then argued that, since the applicant's principal officers who were required to sign written statement of defence it was not legally practicable for the applicant to secure his principal officers to sign the applicant written statement of defence within the prescribed period of time and that, is the reason for delay of filing application on time and the basis of the application. Next, the applicant explained that, the court under Section 14(1) of the Law of Limitation Act Cap 89 has a discretionary power to extend the time to file a written statement of defence where there is reasonable and sufficient cause. He further argues that, it will be in the interest of if the suit will be heard on merit.

In response to the application, Ms. Miriam Semlangwa relying on affidavit sworn by her she opposed the application on ground that, the application is not legally maintainable for reason it omitted to cited Rule 2(2) of the High Court Commercial Division Procedure Rules GN 250 of 2012 and Section 93 of the Civil Procedure Code Cap 33.

Turning to merit of the application the respondent counsel explained that, the applicant were granted 21 days to file written statement of defence but expired under their watch without filing a defence as per court order. She finally opposed the application and stated that, since Section 93 of the Civil Procedure Code was not cited in the Chamber Summons and Rule 2 Rule 2(2) of the

High Court Commercial Division Procedure Rules GN 250 of 2012 the application is not legally maintainable, and pray for dismissal of the suit.

In his rejoinder, Mr. Balomi, Learned Advocate maintain his earlier submission that, the assigned reason are sufficient enough to enable the court to exercises is discretion and grant an extension of time.

The court has considered the applicant's application and respondent reply to the application and find that, the court under Section 14(1) of the Law of Limitation Act, Cap 89 the Court has discretionary power to grant an extension of time to file any application or an appeal. Admittedly as pointed by Ms Semlangwa, the cited Section 14 of the Law of Limitation Act is silent if under the said section the court may enlarge the time for filing a written Statement of defence. Indeed Section 14(1) and (2) of the Law of Limitation Act Cap 89 [R.E 2002] provides as follows;-

Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

So upon perusal of Section 14 (1) of the Law of Limitation Act Cap 89 [R.E 2002] cited above I find it is an enabling provision for extension of time to institute appeal or any application. But as it can be seen from the applicant application he is not applying for a court order for an extension of time to file an appeal or application. Rather the applicant is seeking for a court order for enlarging time for filing a written statement of defence.

Therefore as indicated by Ms Semlangwa the relevant and enabling provision of the law for enlarging any period fixed or granted by the court any act prescribed or allowed by this Code is Section 93 of the Civil Procedure Code Cap 33 which was not cited in the chamber summon.

However the court find even if Section 93 of the Civil Procedure Code was not cited in the chamber summon that, is not the end of the matter, because I undertook to peruse the provisions of Section

93 of the Civil Procedure Code Cap 33 and find it allows the Court on its own motion and discretion to make an order of doing any act prescribed or allowed by this Code which in my include to enlarge time for filing a written statement of defence notwithstanding if there is application or not. In deed the section 93 of the Civil Procedure provides that,

*Where any period is fixed or granted by the court for doing any act prescribed or allowed by this Code, the Court may in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.*

So reading between the lines of Section 93 of the Civil Procedure Code Cap 33 [R.E.2002] the words which read as “*where any period is fixed or granted by the court for doing any act prescribed or allowed by this Code, the Court may in its discretion, from time to time, enlarge such period*” in my view their literal interpretation is that court in its discretion may enlarge time of doing any act including the time for filing a written statement of defence notwithstanding if there is an application or not. .

In other words the court discretionary powers under Section 93 of Civil Procedure Code Cap 33 is not subject to a condition that, there has to be an application. In my view court discretionary powers for enlarge time for filing a written statement of defence may only be exercised once, it is established that there sufficient reason or cause to warrant the exercise of judicial discretion vested to the court.

Now turning to the facts available in the proceedings of present application and commercial case No 152 of 2006 the court finds Applicant and defence counsels were on 20/2/2017 granted time to file the written statement of defence by 13/3/2017.

Further the court finds, way back on the 22/3/2017, the Applicant/ defence counsel persistently and consistently reported to the court that they have failed to file the written statement of defence because their directors were in South Africa.

Taking into account that, the defendant/applicant was required to file a written statement of the defence while their directors duly authorised to sign pleadings were reported to be in South Africa

then it was not legally and factual possible for the defendant/ applicant to file the written statement of defence within the requisite prescribed period because their directors were in South Africa.

The court is mindful courts in several decisions including in the decision in the case Ratnam Versus Cumarsamy and Another [1964] 3 ALL ER 933 it was emphasized that, parties to litigation must obey rules of the court including the one compelling the defendant/applicant to file a written statement of defence as per the Rules. . In deed in the said decision it was held;

The rules of the Court must prima facie be obeyed and, in order to justify a court in extending time during which some step in procedure requires to be taken there must be some material on which the Court can exercise its discretion. If the law were otherwise any party in breach would have an unqualified right to extension of time which would defeat the purpose of the rules which is to provide a timetable of the conduct of litigation.

However, together with that, courts emphasis that, the Rules of the Court must be obeyed, and there are certain circumstance even if the court rule was not complied with by litigant, still the court may exercise it discretion and enlarge time like that, of filing a written statement of defence.

Reverting back to the court record as it appear in the present application and court proceedings of Commercial Case No 152 of 2016 the defendant /applicant reported on the 22/3/2017 that, their principal officers were not in Tanzania and that, is the reason they delayed to file their defence.

So it is my view that, if the principal officers who are authorised to sign pleadings are abroad that, means the defendant may not fulfil or comply of filing his defence with the requisite time because the law requires pleadings of company like that of defendant be signed with the principal officer who is duly authorised to do so.

It is my view that if the delay to file a written statement of defence is caused by absence of principal officer to sign written statement of defence who was abroad, , that may be sufficient cause which may warrant the court to exercise its discretion vested to it by Section 93 of the Civil Procedure Code Cap 33 [R.E 2002] and enlarge the time for filing the written statement of

defence, whether there is application or not. After all it is a requirement of Order XVIII Rule 1 of the Civil Procedure Code, Cap 33 that pleadings including a written statement of defence has to be signed by Principal Officer who were said to be in South Africa.

Thus it appears to me from the wording of Section 93 of the Civil Procedure Code Cap 33 the discretionary powers vested to the court is not tied up to a statutory condition that, there must be an application before the court. Under Section 93 of the Civil Procedure Code the Court on its own motion may exercise the said discretionary power.

Honestly in view the report which the court received on the absence of Defendant's officials in the country, the interest of justice will be better served if the court exercise its discretion vested to it and grant to time to the applicant/defendant to file a defence.

So I hereby exercises the court discretion and enlarge time of the defendant/applicant of filing their written statement of defence within 21 days from today. On cost, I find since it's the court which has exercised its discretion. So there is no order as to costs.

Dated and Delivered at Dar es Salaam on this 5<sup>th</sup> of April 2018

  
H.T. SONGORO  
(JUDGE)

The Ruling was delivered in the presence of Mr. Ballomi Learned Advocate for the defendant/applicant and Ms. Mariam Semlangwa, Learned Advocate of the Plaintiff/Respondent.