

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

MISC COMMERCIAL APPLICATION NO. 318 OF 2017

BETWEEN

STD CALL LIMITED -----APPLICANT

VERSUS

BARCLAYS BANK TANZANIA LIMITED -----RESPONDENT

RULING

SONGORO, J

This is the ruling on the application made by STD Call Limited the applicant applying for an order of extension of time within which to file an application for setting aside dismissal order.

The applicant application is made under Sections 93 and 95 of the Civil Procedure Code Cap 33 [R.E 2002] and Section 14(1) of the Law of Limitation Act Cap 89 and Rule 43(2) of the High Court (Commercial Division) Procedural Rules 2012 and is supported by an affidavit sworn Ms. Lucy Kiangi, Advocate of the applicant.

Respondent in the application is Barclays Bank Tanzania Limited, who also filed the counter affidavit affirmed by Maryam Semlangwa Learned Advocate of the Respondent and opposed the application.

In addition, the respondent also raised a preliminary objections on points of law that;-

1. the application has been brought under the wrong provisions of law and
2. The application is omnibus.

In the light of the preliminary objection on point of law the court invited both counsel to pursue the objection raised and Ms. Maryam Semlangwa appeared for the respondent and pursue the preliminary objection on points of law , and whereas Ms Lucy Kiangi Learned Advocate appeared for the applicant.

In his skeleton argument, Ms. Maryam Semlangwa submitted that, the applicant is applying for an order of extension of time within which to file an application to set aside the dismissal order of the court issued on the 22nd May, 2017.

The Respondent's counsel then argued in her skeleton argument that, the applicant in the chamber summon has cited Sections 93 and 96 of the Civil Procedure Code and Rule 43(2) of the High Court (Commercial Division) Procedure Rules, 2012.

Then the Respondent's counsel argued that, provisions of Sections 93 and 96 of the Civil Procedure Code and Rule 43(2) of the High Court (Commercial Division) Procedure Rules, 2012 are all silent as to whether or not are enabling provision for supporting an application for extension of time. More, the Respondent counsel then submitted that, since the above mentioned sections have been wrongly certainly the application becomes incompetent and ought to be dismissed.

To support his point that, the application is incompetent, the respondent's counsel drew the attention of the court to a case between Marcky Mhango (On behalf of 684 others Versus Azania Shoes Co Ltd & Tanzania Leather Associated Industries, Civil Application No 37 of 2003 CA where Hon Lubuva JA as then was held that, wrong citation of the Rules, render the application to be incompetent and has to be struck.

On the second objection the Respondent submitted that, the application combines a prayers of extension time within which to file an application to set aside dismissal order

At the same time the applicant is praying for a relief of setting aside dismissal order. In that, regard, the respondent argued that, the application is therefore an omnibus and ought to be dismissed.

To support her point respondent's counsel drew the attention of the court to a decision in the case between Mohammed Abdul Hussein Versus Pita Nkempap MLtd Civil Revision No 66 of 2004 where the court held that, in practice, it is wrong to lump two different application together for consideration by the court. The Respondent's counsel also cited the decision in the case between

Rutagatina CL Versus The Advocates Committee and Clavery Mtindo Ngalapa Civil Application No 98 of 2010 where it was held that, application for extension of time and application for leave to appeal are provided in differently....., since the applications are provided for under the different provisions it is clear that, both cannot be lumped up together in one application. For that, reason, Respondent's counsel pray that, the applicant application be strike out.

In response to two preliminary objection on point of law Ms Lucy Kiangi, Learned Advocate of the applicant on the 11/12/2017 she applied for time to file applicant written submissions. Since on 11/12/2017 the court was going into court vacation, it adjourned the hearing of the application up to 7/3/2018.

However when the application was called for further hearing of the applicant response it happened Ms Lucy Kiangi Learned Advocate of the applicant did not file any submissions to be relied by the court. So again on the 7/3/2018 Ms Kiangi further applied for another adjournment a request which was not granted by the court.

In view of the existing Respondent's submissions, the court considered preliminary objections which were raised and find in essence the applicant is applying for two prayers in one application.

The first prayer is an application for extension of time within which to file application to set aside dismissal order of Commercial Case No 69 of 2016 is governed by Section 14(1) of the Law of Limitation Act Cap 89 [R.E 2002].

The second prayer is an application for court order to setting aside a dismissal order of Commercial Case No 69 of 2016 issued on the 22nd May 2017 is made under Rule 43(2) of the High Court (Commecial Division Procedural) Rules, GN 250 of 2012.

Honestly I find, the law requires that, once there has been a delay in fling an application to set aside dismissal order, then an application for extension of time must be filed pursuant to Section 14(1) of the Law of Limitation Act Cap 89 be heard and determined first.

So, in the event the court grant an order of extension of time within which to file an application to set aside dismissal order, that, is where the applicant may file an application for setting aside dismissal order.

The court finding that, the application for extension of time must be heard and determined first is supported by Section 3 of the Law of Limitation Act Cap 89 which requires any proceedings even application which has been filed after expiry of the period of limitation, be dismissed for being time barred.

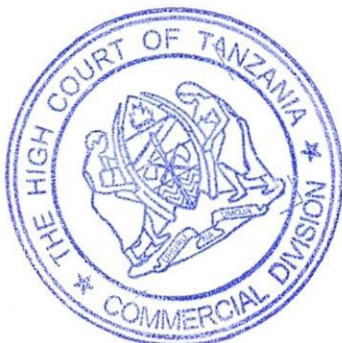
So the application to set aside dismissal order, which is time barred may not be filed parallel and together with application for extension of time, while there is no order extending a time of limitation. . In other words the two application may not be lump together in one chamber summons.

By filing an application for setting aside dismissal order that, pre-suppose that, the applicant has already secured an extension of time within which to file application to set aside dismissal order which is not true in the present application.

In view of the above I agree that, the applicant application is bad in law and omnibus for combining two applications which has two distinct prayers and governed by two distinct pieces of legislations. The applicant was supposed to file separate applications.

For that, reasons, I hereby uphold the preliminary objection on point of law that, the application is omnibus and struck out the applicant application with costs in favour of the Respondent.

Dated and Delivered at Dar es Salaam this 13th day of June 2018




H.T.SONGORO
JUDGE

The Ruling was delivered in the presence of Ms. Felista Msoka, Learned Advocate holding a brief of Ms. Lucy Kiango Learned Advocate and Ms Felista Msoka Learned Advocate of the defendant