

TANZANIA / JUDGMENT

20090924 TZHC Arusha

COURT
TZHCDECIDED
24 September 2009

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. IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CML CA.SE NO. 93 OF 2000 DYNAMIC DRILLERS LTD APPELLANT VERSUS MICHAEL MJUMBE AND ANOTHER RESPONDENT. Date of last order 10/9/08 Date of judgment 24/09/09 .

RULING

MWARIJA, J. On 21/6/2007, the suit was dismissed for non-appearance of the plaintiff or its counsel. It was then ordered that the counter claim be proved ex-parte against the plaintiff. The learned counsel for the plaintiff, Mr. Masaka then filed an application for setting aside the order of the court which granted the defendant's prayer to proceed ex-parte. The defendant did not resist the application and therefore the ... The learned counsel for the plaintiff filed another application for setting aside the order dismissing the suit. The application which was filed on 27/6/2007 is supported by ... affidavits sworn by the learned counsel and one Proscovia Nihongataile, and intern in the learned counsel's law firm. I I They have both sworn that on the 21 st day of June, 2007 when I ' the. suit was dismissed, the learned counsel for the plaintiff ! I was appearing in another case before Luanda, J in: the ' Commercial Court.

- i Ms. Sheikh, learned counsel for the defendant could not file a counter-affidavit. When the application was called for I hearing on 31/3/2008, she prayed for leave to file the affidavit ' . and was granted time to do so by 8/4/2008. . Until on 11/8/2008 when the application came for hearing, the I I counter-affidavit had not been filed. Ms Sheikh learned ' ' I counsel has prayed that she be allowed to file the affidavit as it I was already prepared. She also prayed for time so that she ! could produce a proof on the status of the winding up I proceedings which according to her were filed on 10/4/2004. When she appeared on 15/8/2008, the learned counsel _ _ informed the court that although she was informed that the winding up petition is No. 72 of 2000, the status of the petition was not yet clear and thus prayed for more time to ascertain the position. Time was extended to 28/8/2008 but she could not appear on that date. Mr.Masaka then prayed that the court proceed to give a ruling on this application. He submitted that since the defendant has not filed a counter affidavit, the court should consider to grant his application. From the sequence of facts as outlined above, there is no gainsaying that to give the learned counsel for the defendant another chance of filing a counter affidavit would not suit the best interests of justice. The prayer by Ms. Sheik for extension of time is therefore refused. Mr Masaka has asked that on

the failure by the defendant to file counter-affidavit, his application should be. granted. I think the application ought to be heard before any decision is made. That prayer is therefore also refused and the application shall proceed to hearing. \ A.G~ARIJA JUDGE 24/9/09 3 24/09/09 Coram: Hon A.g. Mwarija, ~- · For the plaintiff · For the 1st Defendant For the 2 nd Defendant Absent CC: Butahe Ruling delivered, Parties to be notified accordingly. A.G. Mwarija JUDGE 24/09/09 Order: Hearing 27 / 11/09 Parties to be notified. A.dlklwarija JUDGE 24/09/09 4

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