

TANZANIA / JUDGMENT

edward epimack lasway vs noctunal international ltd others 2019 tzhc 15 22 october 2019

COURT
TZHCDECIDED
22 October 2019

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISC CIVIL APPLICATION No. 60 OF 2019 EDWARD EPIMACK LASWAY APPLICANT VERSUS
NOCTUNAL INTERNATIONAL LIMITED ..1st RESPONDENT STANBIC BANK TANZANIA
LIMITED.... 2nd RESPONDENT

RULING

24/05 - 22/ 10/2019 J. A. DE-MELLO, J; The Applicant Edward Epimack Lasway brought this Application under section 14(1) of the Law of Limitation Act, Cap. 89 R.E 2002, Section 93 and Section 95 of the Civil Procedure Code cap. 33 R.E. 2002 praying for the following orders;

- (i) That, Leave be granted to the Applicant to re-file a Civil case Out of Time after withdrawing Civil Case No. 19 of 2015 with a leave to refile. (ii) Costs of this application. (iii) Any other Reliefs as this Honourable Court may deem just and fit to grant. The Application was supported by the Affidavit sworn by the Applicant himself, represented by Counsel Heriolotu Boniface whereas; the Respondent enjoyed the legal services glCbunsel Emmanuel Nashon. With the leave of the Court, the Application was disposed of by way of written submissions, with adhering to the schedule. In support of the Application, Counsel Boniface prays for this Court to adopt the contents of the Affidavit and form part of his submissions, further contended that, on 12th October 2018 when the matter was withdrawn from the Court with the Leave to Re-file, the time within which has already lapsed and, therefore the incompetent unless leave of this Court is sought and granted. However, Counsel Boniphace submits that, after the matter was withdrawn with leave to re-file, certified copy of the Court's order on the 24th October 2018 was applied for, and the same supplied on December 2018. Unfortunately at that same time, the Applicant was suffering from hypertension and he was admitted two times between December 2018 and January 2019 leading to delays in filing until t the 8th February, 2019. The said delay was caused by the reasons adduced by the Applicant in his Affidavit as opposed to negligence. He therefore prayed for the Application to be granted as prayed. Responding on the same, Counsel Nasson averred that, the

Application is un-tenable in law as the Court has no jurisdiction to extend time for filing a suit, being time barred from bringing a suit after withdrawing Civil Case No. 19 of 2015, with or without being within time. He referred to Order XXIII Rule 2 of the Civil Procedure Code Cap. 33 R.E. 2002, further stating that, the only remedy available to the Applicant was to seek for Extension of Time, from the Minister responsible subject to section 44 (1) of the Law of Limitation Act Cap. 89 R.E. 2002. That, even if this Application was proper, there is no legal requirement for the Applicant to support his case with an order which withdrew the previous suit. He therefore prayed for the dismissal of the Application with costs. It is in the Applicant's Affidavit that, in 2015, he instituted a Civil Case No. 19 of 2015. However, before the hearing of the said suit, this Court Suo Mottu raised an objection on the issue of Jurisdiction that this Court has, in entertaining the matter. Counsel for the Applicant conceded with the objection and, prayed for withdrawal with leave to refile, the prayer which was granted under Order XXIII Rule 1(1) (2) of the Civil Procedure Code Cap. 33 R.E. 2002. I am thus, in one with Counsel Nasson that, the Leave to Re-file that was granted by this Court, was subject to the Law of Limitation Act Cap. 33 R.E. 2002 as provided under Order XXIII Rule 2 of the Civil Procedure Code Cap. 33 R.E. 2002 which provides as follows, I quote;- "In any fresh suit instituted on permission granted under rule 1, the Plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted". It is my settled view that, after the Applicant found that the time to file a fresh suit had already lapsed, the only remedy available to him was for him to seek for Leave to Extend Time before the Minister responsible with legal matters as provided under section 44(1) of the Law of Limitation Act (Supra) and not before this Court. It is from the above reasons that, I, accordingly Dismiss the Application for Want of Jurisdiction. It is so ordered. J. A. DE-MELLO JUDGE 22/10/2019

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