

TANZANIA / JUDGMENT

mega builders ltd vs dpi simba ltd

2018 tzhccomd 63 28 may 2018

COURT
TZHCCOMDDECIDED
28 May 2018

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IN THE HIGH COURT OF TANZANIA COMMERCIAL DIVISION AT DARES SALAAM MISC
COMMERCIAL APPLICATION NO 413 OF 2017 (Arising from Commercial Case No 109 of 2015
BETWEEN MEGA BUILDERS LIMITED -----APPLICANT VERSUS DPI
SIMBA LIMITED -----RESPONDENT

RULING

SONGORO,J Mega Builders Limited the applicant/judgment debtor filed an application under Section 14(1) of the Law of Limitation Act Cap 89 applying for an order of extension of time within which the applicant may apply for review of decree issued by Hon Mruma J in the Commercial Case No 109 of 2015 dated 2nd March, 2016. The Respondent /Decree debtor in the application is DPI Simba Ltd. In the light of the application the matter was fixed for hearing on the 28/5/2018. So Mr. Ashiru Lugwisa Learned Advocate appeared for the applicant and Mr Benjamin Karume, Learned Advocate appeared for Respondent. /Decree holder. In pursuing the application, Mr Lugwisa explained that the application is made under Section 14(1) of the Law of the Limitation Act Cap 89 and is supported by an affidavit of Balbir Singh Malik. Then the applicant counsel explained that the application emanates from a Decree which was passed on 2/3/2016 in Commercial Case NO 109 of 2015 which was ultimately settled by parties under the Deed of Settlement. The applicant then explained that following the settlement which was agreed by both parties, later a decree was passed and issued. Then the applicant stated that when the Respondent was in the process of the execution of the decree, the applicant realized that "the Decree" was at variance with the "Deed of Settlement" that one of the term that, payment of the decree is subject to payments from the Ministry of Water and Irrigation was missing. Page 1 of 3 So it was the argument of the applicant that the review is necessary for correcting such an error where such important term is missing. On the delay in filling the present application the applicant stated its only when Respondent starting enforcing a decree the applicant realized that there is "an error" in the Decree. Mr. Lugwisa then argued that since there is a legal defects that is why they have filed an application for extension of time. He then invited the court to allow the application and grant and extension of time. On his part Mr. Karume for Respondent explained that the applicant has not adduced sufficient reason to warrant the court to exercise it discretion and grant an extension of time. Secondly the respondent counsel explained that the application

has been filed after inordinate delay and the applicant has not accounted for the delay. So finally, Mr Karume pray for dismissal of the application for lack of merit. The court has considered the applicant application made under section 14 (1) of the Law of Limitation Act Cap 89 and find the court has discretionary power to extend the time of filing a review. But such discretion must be exercised judiciously and with concise reasoning. Turning to the application at hand I find the Decree which is being sought to be reviewed was issued on 21st March, 2016 while the application was filed on 28th December 2017. Thus going by simple mathematics there has been long delay exceeding 12 months in filing the present application. The court is mindful that the remedy of extension of time available under Section 14(1) of the Law of Limitation Act is available to a party who was acting with diligence but due to reasonable and sufficient cause failed to apply for review. Taking into account that the applicant, slept for entire one year plus without taking any legal action and then filed the application after long delay, the court finds it will not be proper for it to exercise its discretion and grant an extension of time where the applicant consumed more than one year without assigning good or sufficient cause for delay and such long delay. Consequently I decline to make an order of extension of time and dismiss the application. Since Respondent did not file any counter affidavit I make no order as to costs. Page 2 of 3 Dated and Delivered at Dar es Salaam on this 28th May, 2018 HT~ (JUDGE) The Ruling was delivered in the presence of Mr. Ashiru Lugwisa Learned Advocate of the applicant and Mr. Benjamin Karume, Learned Advocate of the Respondent. Page 3 of 3

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ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/183179/source_file/mega-builders-ltd-vs-dpi-simba-ltd-2018-tzhccomd-63-28-may-2018.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/mega-builders-limited-v-dpi-simba-limited-extensionof-time-tzhccomd-2018

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