

TANZANIA / JUDGMENT

MS AFRICAN WHEELS TYRE LTD VS SC GINNING CO

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM MISC COMMERCIAL APPLICATION NO 14427 OF 2024 (Arising from
Commercial Case No 59 of 2021 of the High Court - Commercial Division at Dar es Salaam) M/S
AFRICAN WHEELS & TYRE LIMITED..... APPLICANT Versus S & C GINNING CO.
LIMITED..... RESPONDENT

RULING

Date of last Order: 17/07/2024 Date of Ruling: 23/08/2024 AGATHO, J.: By virtue of Section 14 (1) of the Law of Limitation Act [Cap 89 R.E. 2019], the applicant M/S African Wheels & Tyre Limited has brought an application for extension of time to file an application for review against the decision of this Court in Commercial Case No 59 of 2021. The application is supported by the affidavit of Jagdeep Kaur Mangat, Managing Director of the applicant. The respondent on her side filed counter affidavit to protest the application. For the hearing by way of written submissions, the applicant employed the services of Edward Mollel, advocate, and the respondent retained Mr. Denice S. Tumaini also a learned advocate. 1 The background information to the application is that the applicant was the defendant in Commercial Case No 59 of 2021 in this court. The said case was determined by a default judgment which was entered after the effort to procure attendance of the applicant herein in court to defend his case proved futile. This decision which was to the detriment of the applicant was delivered on 21st January 2022. According to her affidavit, the applicant claims to become aware of the existence of Commercial Case No 59 of 2021 only on 22nd February 2024, more than two years after the decision was rendered. The applicant is now before the Court seeking for extension of time to file application for review against that decision. From what is deposed in the affidavit of the applicant under paragraphs 4, 5, 8, 9, 10 and 11 of her affidavit, the reasons for delaying to challenge the default judgment are that she was not aware of the existence of the matter and secondly that the decision sought to be challenged contains an illegality. The respondent objected to the application through counter affidavit, stating that the applicant was properly served but did not attend to court hence she cannot come now and claim that she was unaware of the matter in court. 2 The applicant opted to adopt his affidavit and added that according to the Law of Limitation Act, Item 3 of Part III to the Law of Limitation's Schedule, a period of 30 days from the date of the decision is provided for an

application under the Civil Procedure Code for applying for review of a decree, judgment or order. The applicant submitted that she has good cause of delaying to challenge the decision against her as she did not know of the pendency of the matter in court. Further, the applicant argues that Commercial Case No 59 of 2021 contained some illegalities of jurisdiction as being conducted contrary to the fundamental principle of right to be heard. She cited the cases of Felix Tumbo Kisima v Tanzania Telecommunication Co Ltd & Another (1997) TLR 57 CA, Transport Equipment vs Devram Valambhia (1998) TLR 89, Mbeya Rukwa Auto Parts and Transport Equipment Limited v Justine George Mwakyoma (2003) TLR 251 also the case of Abbas Sherally & Another v Abdul Sultan Haji Mohamed Fazalboy, Civil Application No 33 of 2002. On her side, the respondent totally opposed this application through her counter affidavit and written submission. The learned counsel stated that the applicant has not advanced sufficient reasons to warrant the discretion of the court to extend time. The respondent also moved this court to find that the application is misconceived as the remedy available for a party who wants to challenge a default judgment is not an application for review but application to set aside such a judgment. This is according to Rule 22 of the High Court Commercial Division Procedure Rules, GN 250 of 2012 as amended by GN 107 of 2019. He prayed that the application be dismissed with costs. I have thoroughly gone through arguments by both sides for and against the application. In the first place, the provision of law by which this application is brought that is Section 14 (1) of the Law of Limitation Act, sets down an ultimate condition for a court to grant of extension of time. The relevant factor for consideration in an application for extension of time under Section 14 of the Law of Limitation Act is the applicant to advance reasonable or sufficient cause for the delay. The section provides as thus: 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. 4 What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account to connote reasonable or sufficient cause. Admittedly, such factors are certainly not exhaustive but they include length of the delay, whether or not the applicant has accounted for the delay, and degree of prejudice to the respondent and whether there is illegality or any issue of law of sufficient public importance in the decision sought to be challenged. This much can be observed in the cases of : Lyamuya Construction Co. Ltd v. Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, Sebastian Ndaula vs. Grace Rwamafa, Civil Application No. 4 of 2014, Saidi Ambunda v. Tanzania Harbours Authority, Civil Application No. 177 of 2004 and Abood Soap Industries Ltd v. Soda Arabian Alkali Limited, Civil Application No. 154 of 2008 and Joel Silomba v. Republic, Criminal Application No. 5 of 2012 among many other cases. Going by these factors as against the circumstances of this case, the applicant admitted that she has come to court to seek extension of time, after a period of two years. This is obviously a very long delay. The applicant was required and expected to account for every day of delay in challenging the default judgment, however she did not bother doing that. Glancing at the proceedings of the case sought to be challenged, the respondent herein employed every reasonable effort in procuring the presence of the applicant in court to no avail, a substituted

service being one of the modes of service, but the applicant never showed up in court. It appears from record that the applicant showed up after the corporate veil was lifted and the director of the company was arrested and detained as a civil prisoner (See para 6 of the applicant's affidavit). The question that follows is whether the applicant's application has merit. The answer to this question is simply no. It is noted from record that this application for extension of time was filed in this court on 21st June 2024. Under normal circumstances, if the applicant was truly unaware of the decision rendered against her and since she agrees to have gotten information in February 2024, why then did she wait until June to file this application? I do not buy the explanation that the applicant, being a company was seeking for legal assistance as deposed by the applicant at the 8th paragraph. It is my considered opinion that the applicant in this case did not act promptly. The applicant also submitted on the point of illegality. He submitted that there is an illegality of the decision sought to be challenged by way of review. Looking at the explanation provided by the applicant regarding illegality in the matter, I am unable to agree with him that there was any illegality in Commercial case No 59 of 2021. Besides, illegality 6 has to be apparent on the face of record. The issue of a right to be heard, which is a fundamental right was in my view taken care by service done through substituted means, that is publication in the newspapers. And that is loud in the record of proceedings. Nevertheless, the substance of illegality is to be determined by the review or appellate court. There is yet another disturbing thing about this application which is prepared by a learned advocate. The applicant is seeking extension of time so as to file an application for review. Just as submitted by the respondent, I have also asked myself in a situation where this application is granted, will the applicant be able to successfully challenge Commercial case No 59 of 2021 by way of Review? I am as well doubtful if the way to challenge the impugned default judgment and decree is by way of review. All said and done, I am satisfied that the applicant has failed to advance any material sufficient to account for the delay. Along with that the application appears to be misconceived. The application is therefore struck out with costs. Order accordingly. DATED at DAR ES SALAAM this 23rd Day of August 2024. 7 AGATHO JUDGE 23/08/2024 Date: 23/08/2024 Coram: Hon. U. J. Agatho J. For Applicant: Edward Mollel, Advocate For Respondent: Michael Benzege Mihayo, Advocate. C/ Clerk: E. Mkwizu Court: Ruling delivered today this 23rd August 2024 in the presence of Edward Mollel, learned counsel for the Applicant, and Michael Benzege Mihayo, learned counsel for the respondent. JUDGE 23/08/2024 8

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