

TANZANIA / JUDGMENT

MISC

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB
REGISTRY AT DAR ES SALAAM MISC. CIVIL APPLICATION NO. 19186 OF 2024 (Arising from the
Judgement of the Resident Magistrate Court of Dar es Salaam at Kisutu (Hon. Kabate, PRM) dated
18th March 2024 in Small Claim Civil Case No. 93 of 2023)

PRINCES ENTERTAINMENT LIMITED APPLICANT VERSUS MANFRED
RWESUGISA.....RESPONDENT

RULING

Date of last order: 20th December 2024 Date of Ruling: 17th February 2025 MTEMBWA, J.: As discerned from the fact, on 7th January 2023, the Respondent went to the Applicant's casino, known as AFRICA PRINCESS CASINO, located at Dar es Salaam at the Four Points by Sheraton Hotel building to play some gambling games, commonly known as BACCARAT in which he first placed Tanzanian Shillings 2,000,000/= as an initial payment for the game. Having played several rounds, he was lucky to win a total sum of Tanzanian shillings 52,100,000/=. The facts reveal further that, having won the stated sum, the Respondent excitedly approached the cash desk to collect his money, only to be informed by the manager that they did not have enough money. He was advised to wait while some arrangements were made to pay him. The Respondent patiently waited for some time, and later, he approached the manager, who gave him a receipt as an acknowledgment that he was entitled to such sum. On the following day, the Respondent went to collect the money only to be informed that he was not entitled to such sum. He was only given the sum of Tanzanian Shillings 2,000,000/= as the initial amount he injected to launch the game. Being exasperated, he complained to the Gaming Board of Tanzania. Having been not amused by such a stance, the Respondent successfully commenced proceedings against the Applicant in the Resident Magistrate's Court of Dar es Salaam at Kisutu. It could appear that, having been dissatisfied, the Applicant could not appeal within time. As a result, she has filed this Application seeking an order for an extension of time within which to file an Appeal out of time. Having been served, the Respondent resisted the Application by filing a Counter Affidavit. When the matter came for orders on 20th December 2024, Ms. Salha Mlilima appeared for the Applicant, while the Respondent 2 appeared in person. By consent, the parties agreed to argue this Application by way of written submissions. Having reviewed the records, I am satisfied that the parties adhered to

the agreed schedule to which I am indebted. Taking the podium, Mr. Msemwa, having prefaced on what transpired before, submitted that the Respondent filed small claim No. 92 of 2023 against the Applicant for payment of Tanzanian Shillings 52,100,000/= being specific damages and Tanzanian Shillings 50,000,000/= being general damages for the prize won by the Respondent in the Applicant's Casino. Subsequently, the pleadings were filed, including a written statement of defense resisting the Respondent's claims. He added that previously, the Applicant had engaged the services of an advocate to represent her, but surprisingly, when the matter came for hearing on various dates, he did not show up without notice. The learned counsel continues to note that the matter proceeded for hearing from 19th September 2023 to 4th March 2024, followed by the pronouncement of the judgment on 18th March

2024. During that time, the advocate engaged was not present and, unfortunately, did not let the Applicant know until 1st July 2024 when he became aware of the Judgement. Having been aware, he engaged Mr. Jerome Msemwa, the learned counsel, who wrote a letter to the trial Court asking permission to peruse the case file. The Judgement and Decree were received on 27th July 2024, and this Application was filed on 7th August 2024. He cited the cases of *Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania* Civil Application No. 2 of 2010 [2011] TZCA 4 (3rd October 2011) and *NBC Limited & Another vs. Bruno Vitus Swalo*, Civil Application No. 139 of 2009, in which the criteria for granting an extension of time were underscored. The learned counsel also insisted on the need for an advocate to represent his client with diligence, pressing reliance on the case *Abdallah Juma Kambale vs. Noradi Tiliko Mongelwa*, Civil Appeal No. 231 of 2018, where it was observed that an advocate is required to discharge his duties with integrity towards his client as stipulated under regulation 5 of the Advocates (Professional Conduct and Etiquette) Regulation, 2015. He has a duty also to explain and advise his client and not to wave or abandon a client's legal rights without his or her consent. 4 Mr. Msemwa also faulted the impugned Judgment of the trial Court, claiming that it was illegal, null, and void because the Applicant was not informed of the date when it was delivered. He cited Order XX Rule 1 of the Civil Procedure Code Cap 33 R.E 2019 (Hereinafter "CPC"). He contended that illegality is a sufficient cause for an extension of time. He cited the case of *Ajay Hansraj Asher vs. Triumph Impex Limited*, Misc. Civil Application No. 212 of

2022. In his further submission, the learned counsel implored this Court to allow this Application on grounds of overriding objective under section 3A (2) of the CPC. Based on the foregoing submissions and cited authorities, the learned counsel beseeched this Court to allow the Application. The Respondent vigorously resisted the Application. In his further submission, he faulted the Applicant for failing to advance justifiable reasons to warrant an extension of time. He cited the case of *the Principal Secretary, Ministry of Defense and National Service vs. Devram Varambia* (1992) TLR 387, where it was observed that it is at the discretion of the Court to grant an extension of time. However, that discretion is judicial, so it must be exercised according to the rules of reason and justice, not according to private opinion or arbitrarily. In addition, the Respondent faulted the

Applicant for failure to account for days of delay from 18th March 2024 to 1st July 2024. On whether the summons to appear and receive the Judgement was served, the Respondent submitted that it was served to the Applicant, who acknowledged it by signing. In addition, the summons was publicized in a well-circulating newspaper. He cited the case of the Registered Trustees of the Archdiocese of Dar es Salaam vs. the Chairman, Bunju Village Government, Civil Appeal No.147 of 2006. Finally, the Respondent argued that negligence by an advocate is not a sufficient ground for an extension of time. He cited the case of NBC Limited & Another vs. Bruno Vitus Swalo, Civil Application No. 139 of 2009, where it was observed that negligence by an advocate cannot constitute valid ground for an extension of time. A litigant is expected to take responsibility for the matter in Court even when represented by counsel. Based on the foregoing, the Respondent implored this Court to dismiss the Application. 6 In his rejoinder, Mr. Msemwa insisted that the delay was caused by an advocate's failure to disseminate information to the Applicant. He was thus not even informed of the date of the Judgment. He insisted further that the negligence by the Applicant's advocate is sufficient reason for an extension of time. Persuasively, he cited the case of Princess Entertainment Limited vs. John Joseph, Miscellaneous Civil Application No. 19315 of 2024. On the strength of the arguments and cited authorities, the learned counsel implored this Court to grant this Application. Having dispassionately considered the rival urgings of the parties, the question before me is whether there are justifiable reasons warranting the grant of this Application. In the case of Lyamuya Construction Company Ltd (supra), which was correctly cited to me by Mr. Msemwa, the Court of Appeal of Tanzania laid down the following factors to be considered before enlarging time thus;

- (a) The Applicant must account for all the period of delay;
- (b) The delay should not be inordinate;
- (c) The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take (d) If the court feels that their other sufficient reasons, such as the evidence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged. Guided by the above position, it is high time that I determine the Application. Parties at least agree to each other that for this Court to enlarge time, there must be "good cause" established. Conversely, the definition of "good cause" has not been explained in any rule or Act. That, it would appear, was not accidental. The respective power being purely discretionary and equitable cannot apply identically in all circumstances, and as such, the categories of good cause are never closed. In Masatu Mwizarabi vs. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010 (unreported), the Court observed that "good cause" is a relative one and is dependent upon the party seeking an extension of time to provide the relevant material for the Court to rely on. Admittedly, case law has established some principles to be considered in determining the existence or non-existence of good cause. For instance, in Tanga Cement Company Limited (supra), the Court observed that what amounts to sufficient cause has not been defined. 8 From decided cases, several factors have to be considered, including whether or

not the application has been brought promptly, whether there is any explanation for the delay offered, and whether there is proof at the lowest of the diligence on the part of the Applicant. Equally, Courts are urged not to limit themselves to the reasons for the delay when determining the Application for an extension of time. The Courts should go further and consider the result or implication of granting or not granting the Application. The application may be refused if it serves no purpose or is an abuse of the Court process (see Reuben Lubanga vs. Moza Gilbert and 2 Others, Civil Application No. 533 of 2021, Court of Appeal of Tanzania at Dar es Salaam (Unreported). In this Application, the Applicant is seeking an order of extension of time to file an appeal to this Court against the Judgment and Decree of the Resident Magistrate Court of Dar es Salaam at Kisutu (Hon. Kabate, PRM) in Small Claim Civil Case No. 93 of 2023. The Applicant's main complaint is that the advocate who was engaged to take up the matter abandoned it without notice, and as a result, the hearing proceeded in her absence. In addition, he faulted the trial Court for failing to issue the summons informing the Applicant of the date of the judgment. On his part, the Respondent resisted the Application, claiming that an error of an advocate is not a lawful cause for an extension of time. Stretching further, he submitted that the Applicant has not advanced justifiable reasons to warrant an extension of time. He was not amused by the Applicant's assertion that she was not informed of the date of the Judgment because the summons was effectively served and received by the Applicant. In addition, that summons was served through publication in the newspaper. Conversely, parties are not at issue with regard to the fact that the Applicant was not present when the Judgment was pronounced. That being the case, I am constrained to look into whether the Applicant was informed of the date of judgment in a bid to satisfy the requirement of Order 20 Rule 1 of CPC. In other words, I will first look into whether there is illegality. Ordinarily, the alleged illegality must be apparent on the face of records (see Lyamuya Construction Company (supra). As said before, the Respondent resisted the Application, alleging that the summons was served to the Applicant, who acknowledged the receipt by signing it. He also informed this Court that the summons was publicized in the well-circulating newspaper. Ordinarily, I expected the Respondent to let this Court know when the summons was served to the Applicant and if there is any proof of service. It was also expected to hear from the horse's mouth, which newspaper dated when the summons was publicized. To the surprise, the Respondent stood mute, leaving this Court to research on its own. In the circumstance, I am constrained to draw an inference adverse to the Respondent that the summons to inform the Applicant of the date of Judgment was not effectively served. Since the Respondent arguably stated that the summons was effectively served to the Applicant through ordinary means and by publication, the burden of proof shifted to him. In the absence of such an explanation, it can be safely said with certainty that summons was served to the Applicant informing him of the date of Judgment. That said, I see illegality on the face of records. This alone suffices to dispose of this Application at once. To that end, this Application is hereby granted on the ground of illegality. Time is hereby extended for the Applicant to lodge an appeal to this Court within fourteen (14) days from today. Considering the circumstances, there will be no order as to costs. It is so ordered. Right of appeal explained. DATED at DAR ES SALAAM this

17th February 2025. H.S. MTEMBWA JUDGE 12

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