IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. CIVIL APPLICATION NO. 33 OF 2019

[Arising from a Judgment and Decree of the High Court of Tanzania in Civil Case No. 10 of 2014 and dated 8th October, 2015]

M/S SKY PACKAGING (T) LTD ..... APPLICANT

VERSUS

M/S BHANJI LOGISTIC LTD ..... RESPONDENT

RULING

24th February, 2021 & 24th February, 2021

M.M. SIYANI, J.

The back ground behind the instant application is that on 21st October, 2014 M/S Bhanji Logistic LTD filed a civil suit against M/S Sky Packaging (T) LTD for payment of US $ 20,800 which was equivalent to Tshs 33,280,000/=, general damages and interests at commercial rate of 23% per annum. The record indicates that the defendant who is the applicant herein, never entered appearance in court. However, on 5th October, 2015 deed of settlement was filed in court purporting to show that parties herein have settled the matter and the applicant has agreed to pay the respondent, a

total sum of US $ 22,400 in four instalments. Subject to the said settlement deed, on 8th October, 2015, the court recorded the agreed terms and issued the decree accordingly.

Almost four year later, that is on 29th May, 2019, the applicant acting through counsel Derick Pascal Kahigi, filed this application for extension of time within which to lodge a notice of intention to appeal against the said decision of this court in Civil case No. 10 of 2014 issued on 8th October, 2015 and to serve the same to the respondent. The application was preferred under section 11 (1) of the Appellate Jurisdiction Act Cap 141 RE 2002 and has been supported by an affidavit of one Felix Niteretse, the Managing Director of the applicant.

Both the applicant and the respondent, were represented by the learned counsel at the hearing of this application. As prior noted, while the applicant enjoyed the services of counsel Kahigi, the respondent had the services of counsel Francis Kesanta. Through his affidavit and the submissions made by his counsel, the applicant raised a question of illegality of the recorded settlement order alleging that he was not aware nor was he informed of

existence of civil case No. 10 of 2014 which was disposed by a settlement order dated 8th October, 2015. According to counsel Kahigi, the applicant who was not served with summons and therefore never entered appearance in court, became aware of the same on 21st March, 2019 when he was notified about execution of the orders issued. The learned counsel argued that being unaware of the suit, the applicant was denied his right to be heard which renders the impugned settlement order illegal and, in his view, illegality amounts to sufficient cause for extension of time. Counsel Kesanta on the other hand, was firm that the applicant was served with summons in respect of Civil Case No. 10 of 2014 and the raised issue of illegality was therefore impenetrable. He argued that the applicant signed the settlement order and as such he was accordingly heard.

The above being the summary of what was submitted by the learned counsel, it is an established principle of law that in an application for extension of time, the applicant is supposed to establish that he was prevented by sufficient cause from taking a required legal course. Time will only be enlarged where there is proof that the applicant is not to blame for delay. Admittedly, there is no single accepted definition of what amounts to

sufficient cause. Generally, whoever seeks extension of time, is bound to account for each day of delay or disclose an apparent error that amounts to illegality of the impugned decision. See; **Attorney General Vs Twiga Paper Products Limited**, Civil Application No. 128 of 2008, **Losindilo Zuberi Vs Ally Hamis,** Civil Application No. 5 of 1999 and **VIP Engineering and Marketing Limited and 2 Others Vs Citibank Tanzania Limited** Consolidated Civil References No. 6, 7 and 8 of 2006, Court of Appeal of Tanzania (unreported).

Admittedly, it has been alleged that civil case No. 10 of 2014, was disposed by filing and recording of a settlement deed. The practice as far as recording of settlement orders is concerned, is that both parties or at least the one to whom the obligation has been placed by the deed, must be present in court. The terms of the settlement deed would then be read before parties are asked to state if the same represents what they have agreed. The court will only record a settlement deed to be its orders when such deed has been signed by parties who have also accepted its terms.

In the present matter, the applicant alleges that he never entered appearance in court neither was he present when the court recorded the settlement order. According to him, he was therefore decreed to pay the sum of UD $ 22,400 without being heard. I have examined the rival submissions by the parties. In my considered opinion and as correctly argued by counsel Kahigi, the fact that the applicant claims that the deed was recorded in his absence, might have denied him an opportunity to be heard something which may render the ultimate decision a nullity on reason of illegality. The law therefore requires that where there is such claim of an illegality courts of law should not wring their hands in desperation but must give themselves an opportunity to look into the alleged illegality by extending time within which appeals or application can be filed. See **Principal Secretary, Ministry of Defence and National Service Vs Devran Valambhia** (1992) TLR 185.

That said, I find a claim of illegality raised by the applicant to be a sufficient cause for extension of time and consequently the application is hereby granted by enlarging time within which to lodge a notice of intention to appeal against a judgment and decree of this court in Civil case No. 10 of

2014 and to serve the same to the respondent as prayed, to 14 days from the date of this order. Considering the circumstance of this matter, I order each side to bear its own costs. Order accordingly.

DATED at **DODOMA** this 24th Day of February, 2021

M.M. SIYANI

JUDGE