

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**COMMERCIAL DIVISION**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 119 OF 2023**

**HONEST LOGISTICS LIMITED.....PLAINTIFF**

**VERSUS**

**ZAIN'S LOGISTICS LIMITED.....1<sup>ST</sup> DEFENDANT**

**ZAINUL NURDIN DOSSA.....2<sup>ND</sup> DEFENDANT**

**KHALID ZAINUL DOSSA.....3<sup>RD</sup> DEFENDANT**

*Date of Last Order: 28/11/2023*

*Date of Ruling: 29/11/2023*

**RULING**

**MKEHA, J:**

The present suit was instituted in court on 21/09/2023. By 10/10/2023, the defendants had been served with the plaint and summonses which required them to file their defence within twenty one (21) days from the date of service. However, up to 28/11/2023 the defendants had not filed their respective defences. On this latter date, Ms. Sweet Charles Rugandabuye learned advocate for all the defendants appeared in court to

seek for extension of time within which to file the Written Statement of Defence.

In reply to the prayer for extension of time, Mr. Gilbert Mushi learned advocate for the plaintiff submitted that, the defendants, having been served on 10/10/2023, were supposed to file their written statement of defence within 21 days after being served with the plaint. Rule 20 (1) of the High Court (Commercial Division) Procedure Rules was cited. The learned advocate went on to submit that, in terms of sub-rule (2) of Rule 20 of the Rules, prayer for extension of time to file defence ought to have been brought within seven days after expiry of the statutory 21 days' period. The learned advocate prayed to be allowed under Rule 22 (1) of the Rules, to file Form Number 1 in which case he would then move the court for default judgment in favour of his client.

When the learned advocate for the defendants rose to rejoin, she merely registered her concession that, it was true that the defendants were out of the statutory time allowed to make an application for extension of time to file defence. She nevertheless prayed for the court's mercy, so her clients would be allowed to file defence.

The only determinative issue is whether the principle that there is no specific time limit set within which an application for extension of time is to be made applies in matters pertaining to extension of time to file the Written Statement of Defence. I am mindful of the position in **TANZANIA RENT A CAR LIMITED VS PETER KIMUHU**, CIVIL APPLICATION NO. 226/01/2017 that, *an application for extension of time, like any other application for which no specific time for instituting the same is provided by the Rules or any other law*, should be filed or lodged within sixty days from the date of the decision. By necessary implication, where a statute provides a time limit within which an application for extension of time is to be made, such an application has to be made within the time specified in the statute. In such cases, the general rule that there is always no specific time limit for making an application for extension of time does not apply.

Sub-rule (2) of Rule 20 of the High Court (Commercial Division) Procedure Rules is explicit that, a Judge or a Registrar, may, upon an application by the defendant before the expiry of the period provided for filing defence or within seven (7) days after expiry of that period showing good cause for failure to file such defence, extend time within which the defence has to be filed for another ten days and the ruling to that effect should be delivered

promptly. That is also the spirit of the law under sub-rule (3) of Rule 1, Order VIII of the Civil Procedure Code. Under the law therefore, a specific time is set within which an application for extension of time to file defence has to be made. The law speaks loudly that the application has to be made before the expiry of the period provided for filing a written statement of defence or within seven (7) days after expiry of that period and upon the defendant showing good cause for failure to file such written statement of defence.

There was no denial on part of the defendants to the fact that, the plaint was served upon them on 10/10/2023. Along with the said plaint, the defendants were also served with summonses requiring them to file their respective defences within twenty one (21) days from the date of service. Therefore, the ordinary time for filing defence in this case expired on 31/10/2023. The time within which the defendants could have sought extension of time to file their defence expired on 07/11/2023.

The first attempt to seek for extension of time to file defence was made on 13/11/2023 before her Worship, the Deputy Registrar who advised the counsel for the defendants to make the application before the assigned Judge. The learned counsel for the defendants heeded to the advice

thereby reiterating her prayer before me on 28/11/2023. In both occasions, the application for extension of time was made after the allowable statutory period within which the same could be made.

The reason assigned for failure to file defence within the permissible time was that, the counsel for the defendants was lately engaged. In any case, the defendants' obligation to file defence arose when the defendants received the plaint and summons to file defence. Not when the defendants obtained an advocate. For these reasons, I hold that the application for extension of time to file defence must fail. The same is dismissed.

Consequently, the plaintiff is invited to file Form Number 1 under the Rules, to move the court for default judgment. It is so held.

**DATED** at **DAR ES SALAAM** this 29<sup>th</sup> day of **NOVEMBER** 2023.



*C. P. MKEHA*  
**C. P. MKEHA**

**JUDGE**

**29/11/2023**

**Court:** Ruling is delivered in the presence of Ms. Sweet Charles Rugandabuye learned advocate for the defendants.



  
**C. P. MKEHA**

**JUDGE**

**29/11/2023**