

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

MISCELLANEOUS CIVIL CAUSE NO.5 OF 2010

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION
AND**

**IN THE MATTER OF THE DECISION OF THE COMMISSIONER
GENERAL TANZANIA REVENUE AUTHORITY AND COMMISSIONER
FOR CUSTOMS AND EXCISE DATED 16TH FEBRUARY, 2005 AND
23RD FEBRUARY, 2005**

BETWEEN

**ISLAM SALEH NAHDI LIMITED APPLICANT
AND**

**THE COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY 1ST DEFENDANT
THE COMMISSIONER FOR CUSTOMS & EXCISE.....2ND DEFENDANT
THE ATTORNEY GENERAL 3RD DEFENDANT**

Date of last order - 13/8/2010

Date of oral submissions – 13/08/2010

Date of ruling – 24/09/2010

RULING

MAKARAMBA, J.:

This is a ruling on reserved reasons on the Preliminary Objection the Respondents raised against the Applicant's application for leave to apply for prorogated orders out of time, which was lodged in this Court on the 7th day of July 2010. On the 13th day of August when Counsel for the parties made oral submissions on the preliminary objection, this Court dismissed

the application with costs and reserved reasons for a later date. These are the reasons for the order to dismiss the application with costs on the 13th day of August 2010.

On 13th day of August 2010, Mr. Malata learned State Attorney appeared for the Respondents. He was assisted by Mr. Tito, learned Counsel for the 1st Respondent. Mr. Kinguji learned Counsel appeared for the Applicant.

The background to the matter is that on the 7th day of May 2010, the Applicant filed in this Court an application by way of Chamber Summons under section 14(1) of the *Law of Limitation Act* [Cap.89 R.E. 2010, section 18(1) of the *Law Reform (Fatal Accidents and Miscellaneous Provisions) Act* [Cap.310 R.E. 2002], section 68(e) and 95 of the *Civil Procedure Code* [Cap.33 R.E. 2002] and any other enabling provisions of the law, for the following orders:

- 1. This Honourable Court be pleased to extend time within which to make this application for leave.*
- 2. That this Honourable Court may be pleased to grant leave to the applicant to file an application for:-*
 - (a) Orders of certiorari to remove from this Honourable Court and quash the decision for seizure and forfeiture given by the 1st and 2nd Respondents dated 16th day of February, 2005 and 23rd day of February, 2005.*

- (b) *Orders of mandamus directing and ordering –*
 - (i) *The 1st and 2nd Respondents to act according to law*
 - (ii) *The 1st and 2nd Respondents to restore to the Applicant the vehicle with registration No.T660 ABF and the trailer bearing No.T130 ABF.*
- (c) *For an order of prohibition to prohibit and or desist the 1st and 2nd Respondents from carrying out the threat of disposing of the vehicle and trailer stated at paragraph 2 (b)(ii) hereinabove;*
- (d) *That Costs of this application be granted to the Applicant*
- (e) *Any other and further relief(s) that the Honourable Court may deem just and fit to grant.*

The Application has been made out at the instance of Kinguji & Company, Advocates and is supported by the Affidavit of TALAL ISLAM SALEH together with statement of the Applicant annexed to the Application and further grounds and reasons adduced during the hearing of the Application.

On the 22nd day of June 2010, the Respondents jointly filed a Notice of Preliminary Objection that on the first hearing of the Application they shall raise a Preliminary Objection on a point of law that the Application is hopelessly out of time.

Mr. Malata submitting on the preliminary objection that the application hopelessly time barred argued that the Application which is seeking to challenge the decision made by 1st and 2nd Respondents dated 16/02/2005 as reflected in prayer one in the Chamber Summons, is hopelessly out of time. Mr. Malata submitted further that the time limit within which to file for leave for such orders is six months as per section 19(2) and (3) *Law Reform (Fatal Accidents and Miscellaneous Provisions) Act* [Cap.310 R.E. 2002]. Mr. Malata submitted further that if the Applicant failed to file the Application within six months he could apply for extension of time in the next six months making it twelve months, the time limit within which Applicant could make the Application. Mr. Malata submitted further that beyond that the time this Court cannot entertain such application. Mr. Malata submitted further that since the Applicant did not act immediately within that prescribed time he cannot be heard at this time. Mr. Malata elaborating submitted further that the present Application was filed in this Court on 07/05/2010 and counting from the date of the decision the subject of this application, it brings it to almost five years, which is beyond the time limit provided in the law within which the Applicant could have filed for extension of time. Mr. Malata submitted further that this period is beyond the twelve months provided in the law within which to file for application extension. Making reference to the decision of the Court of Appeal of Tanzania in **NBC LIMITED VS. PARTNERS CONSTRUCTION CO. LTD. Civil Appeal No. 34/2003 (Dsm)** (unreported), Mr. Malata submitted that in that decision it was to the effect that the Civil Procedure Code provide for 21 days within which to

file Written Statement of Defence and if the Defendant has failed to file the Written Statement of Defence within the 21 days provided by law then he has to file for extension to file within the 21 days which makes a total of 42 days. Mr. Malata submitted further that the Court while referring to the proviso to Order VIII Rule 1(2) which allows for enlargement of time to be made after the expiration of the 21 days when the defendant is required to file his written statement of defence, the Court (Kaji, JA) observed thus

*"The meaning of this, in our view, is that, when the defendant fails to file written statement of defence within the prescribed period of twenty-one days, he may apply for extension of time, provided he does so within twenty-one days from the expiration of the prescribed period of twenty-one days. If he does so more than twenty one days, his application cannot be entertained. The rationale behind it is to limit the discretion of the court to extend time within which the defendant can file a written statement of defence as was held by this Court in **TANZANIA HARBOURS AUTHORITY VS. MOHAMED R. MOHAMED Civil Appeal No.80 of 1999** (unreported)."*

Mr. Malata relying on the reasoning in that decision submitted that section 19 (2) and (3) of *Law Reform (Fatal Accidents and Miscellaneous Provisions) Act* [Cap.310 R.E. 2002] provides for the time limit for filing application for leave to file application for prerogative orders to be within six months and since the Applicant has failed to file such application within six months then by analogy, since the Applicant has failed to apply for

extension of time within the next six months after the expiration of the first six months, then he cannot be heard in this application and this Court has no jurisdiction to entertain this Application.

Mr. Malata submitted further that the cited case applies for extension of time after expiration of time limit for applications and hence it is relevant to the case at hand and in that decision, the Court of Appeal of Tanzania gave its rationale which is to limit the discretion of the Court, considering that matters of extension of time are a discretion of the court upon the applicant applying for extension, which discretion has the limit which was expressed in that cited case and therefore in the present case, the court has been limited to extend time to file application for leave. Mr. Malata prayed that the application is hopelessly out of time and should be dismissed.

Mr. Kinguji in reply submitted that the Preliminary Objection has no merit at all and it appears that the learned State Attorney is not aware of this matter since the matter started in 2005. Mr. Kinguji submitted further that the Applicant filed an application No.19/2007 praying for the same orders and in his ruling on 08/05/2009, Hon. Justice Mruma of this Court granted the applicant leave to apply for prerogative orders. Mr. Kinguji conceded that unfortunately instead of filing the application they had gone one stage ahead. Mr. Kinguji submitted further that on 14/12/2009, the application was struck out by Justice Makaramba of this Court and it is from this application which they filed praying for extension of time starting from 14/12/2009 when time begun to run and not from 2005 as the learned

State Attorney has submitted. Mr. Kinguji submitted further that they are still within time and technicalities should not be used to defeat justice and prayed the Preliminary Objection to be dismissed with costs for lack of merits.

Mr. Malata rejoining differed with Mr. Kinguji and submitted that the application before this Court which was filed on 07/05/2010 is seeking for among others prayers for leave to be granted to the applicant to file an application for prerogative orders. The date for reckoning the time limit is from the date the first application was struck out which is on 14/12/2009. Mr. Malata insisted that the Applicant is not challenging the decision of this Court dated 14/12/2009 as there is no decision which was made by 1st and 2nd Respondent on 14/12/2009 sought to be challenged, which would have rendered the Preliminary Objection inoperative or misconceived. Mr. Malata submitted further that even the application No.19/2002 was also out of time. Mr. Malata submitted further that counting from February 2005, when the decisions sought to be challenged were handed down by the 1st and 2nd Respondents, twelve months expired in February 2006. The application for extension of time was therefore filed beyond the time limit prescribed by the law and in terms of section 3 of Law of Limitation Act [Cap.89 R.E. 2001], a matter brought out of the prescribed time is to be dismissed.

I have carefully followed the submissions by Counsel for the Parties. It seems to me that the Applicant has brought an application seeking for extension of time within which to make application for leave to file for prerogative orders. This is what seems to have attracted the preliminary

objection by the Respondents that the application is hopelessly out of time. There is however, a ruling of this Court by Mruma, J which was handed down on 08/05/2009, granting the Applicant extension of time to file application for leave for prerogative orders. Whether the present application was also out of time is therefore no longer of moment and in any event this Court cannot sit in review of that decision. The present application is in my view no longer about whether extension of time must have been made during the period of six months.

It is on record that Hon. Mruma J., of this Court in his ruling dated 08/05/2009 granted the Applicant extension of time for application for leave for prerogative orders. It is also on record that on the 28/05/2009, the Applicant filed in this Court application for an order that this Court be pleased to issue prerogative orders of certiorari, mandamus and prohibition to remove into this Court and quash the decision of the 1st and 2nd Respondents dated 16th February 2005 and 23rd February 2005. This Application also attracted a preliminary objection from the 3rd Respondent on a point of law that the application was fatally defective for being prematurely before this Court and on the 29th day of September 2009 the 1st and 2nd Respondents also raised three points of preliminary objection on the Application. The Application was struck out by this Court on 14/12/2009 on among other reasons that it had overstepped the procedure by having been brought prematurely for prerogative orders instead of first applying for leave to apply for prerogative orders as required by law. The Applicant have now come back to this Court and by this Application which was filed on 05/07/2010 they are seeking for extension of time within which to make

this application for leave and for grant of leave to file an application for prerogative. The Applicant are still minded to challenge decisions handed down by the 1st and 2nd Defendants on the 16th day of February 2005 and 23rd day of February 2005 respectively.

In the course of the hearing of the application this Court put a question across to the learned Counsel for the Applicant as to the effect of the ruling of this Court dated 14/12/2009 striking out the application, whether it had cancelled ruling of Hon. Justice Mruma dated 08/05/2009 granting the Applicant extension of time to file application for leave to apply for prerogative orders. Mr. Kinguji responded that the ruling of this Court dated 14/12/2009 striking out the Application did not cancel out the ruling Justice Mruma dated 08/05/2009 granting the Applicant extension of time to file application for leave to apply for prerogative orders. It is baffling therefore why the learned Counsel for the Applicant has not abided by the ruling of Hon. Justice Mruma granting the Applicant extension of time to file application for leave to apply for prerogative orders, instead he has come back to this Court seeking yet for extension of time. Mr. Kinguji conceded that they went astray by not abiding by that the ruling of this Court dated 08/05/2009 by bringing in this Court the present application where they are seeking extension of time to make the application for leave and for grant of leave to file application for leave to apply for prerogative orders. In any event calculating the time which has elapsed from the 08/05/2009 when the Applicant was granted extension of time to bring application for leave to apply for prerogative orders to the 07/05/2010 when they filed the present application it is almost a year and no sufficient

reasons have been advanced by the Applicant to the satisfaction of this Court for such delay.

The Applicant has not abided by the ruling of this Court dated 08/05/2009 granting the Applicant extension of time to file application for leave to apply for prerogative orders. Worse still they have lumped together application for extension of time to make application for leave together with application for leave to file application for prerogative orders. It is therefore as good as they have not applied for leave to file application for prerogative orders.

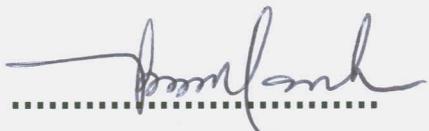
In the event and for the foregoing reasons, the Application is hereby dismissed with costs. Order accordingly.



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R.V. MAKARAMBA
JUDGE
24/09/2010

Ruling on reserved reasons delivered this 24th day of September 2010
in the presence of the Applicant in person and Mr. Chidowu, State Attorney
for the Respondents.



R.V. MAKARAMBA

JUDGE

24/09/2010.

Words count: 2,474