

**IN THE FAIR COMPETITION TRIBUNAL  
AT DAR ES SALAAM**

**APPLICATION NO. 13 OF 2014**

**EMIRATES AIRLINES.....APPLICANT**

**VERSUS**

**IRFAN M. DINANI.....1<sup>ST</sup> RESPONDENT**

**TANZANIA CIVIL AVIATION**

**AUTHORITY (TCAA).....2<sup>ND</sup> RESONDENT**

**RULING**

The matter before us arises out of breach of duty of confidentiality. In order to appreciate the matter before us, we find it necessary to give historical background of this case which may be briefly stated as follows:

Mr. Irfan Dinani, 1<sup>st</sup> respondent herein, made first reservation on line on 25/02/2008 for him to travel by an Emirates Airline. Later on, he tried to change his booking so that he could fly on 19<sup>th</sup> March, 2008. The 1<sup>st</sup> respondent was advised by Emirates Dar es Salaam office that, there was no seat available on 19<sup>th</sup> March, 2008. Mr. Irfan Dinani contacted his wife in Dubai who managed

to secure a waitlisted seat for 19 March, 2008. One day before, the 1<sup>st</sup> respondent received a call from someone who identified himself as Emirates Staff trying to mislead him to confirm his original booking of 20<sup>th</sup> March, 2008 rather than waitlisted booking of 19<sup>th</sup> March, 2008 and asked to confirm of his 1<sup>st</sup> booking which Mr. Dinani vehemently refused. The 1<sup>st</sup> respondent's wife in Dubai later informed Mr. Dinani that his waitlisted space of 19<sup>th</sup> March, 2008 was confirmed, but detected that someone around mid-day, cancelled that booking and Mr. Dinani was confirmed to travel on 20<sup>th</sup> March, 2008. Mr. Dinani had to undergo several attempt and extra efforts to have his available seat for 19<sup>th</sup> March, 2008 restored and managed to fly on his preferred date, that is, 19<sup>th</sup> March, 2008.

On his return to Dar es Salaam, Mr. Dinani after several correspondences with the applicant, finally filed a complaint against Emirates Airlines before Tanzania Civil Aviation Authority (TCAA), the 2<sup>nd</sup> respondent herein. On 12/05/2008 TCAA ordered the applicant to compensate the 1<sup>st</sup> respondent with two business class round tickets for DAR-DUBAI-DAR after it had investigated the Mr. Dinani's complaint presented before it on 12/05/2009. The applicant being dissatisfied with the decision of TCAA, on 29<sup>th</sup> May, 2009 applied before this Tribunal for extension of time to file notice of appeal and lodge an appeal out of time (application No. 6 of 2009) that was struck out on 14/12/2010 for non citation of the applicable rule.

On 17/06/2009 the applicant applied before the Tribunal for extension of time to file notice of appeal and lodge an appeal out of time (Tribunal Application No. 7 of 2009) which was dismissed on 02/09/2010 for none appearance by the applicant. On 07/09/2010 the applicant applied for restoration of Application No. 7/2009 which was then struck out by this Tribunal on 26/09/2011, on the ground that the application for restoration was supported by incurably defective affidavit. The applicant made another application for restoration of Application No. 7 of 2009 on 28/9/2011 which was again struck out on 18/9/2012. The application sought to be restored, Application No. 7 of 2009, was also struck out on 18/09/2012 on the ground that the application which was dismissed on 17/06/2009 and was sought to be restored was itself incompetent for being supported by incurably defective affidavit.

On 10/10/2012 the applicant filed Application No. 5 of 2012 for extension of time to file notice of appeal and lodge appeal out of time, which was granted on 17/04/2014. The applicant filed then filed Appeal No. 1 of 2014 which was struck out on 08/12/2014 for contravening rules 11(3)(5) and 14 of the FCT Rules 2012.

On 08/12/2014 for the 4<sup>th</sup> time now, the applicant is requesting this Tribunal to extend time within which to file notice of appeal. This application was filed on 29<sup>th</sup> December, 2012 after a lapse of 21 days.

The application is supported by an affidavit of one Gaudiousus Ishengoma, an advocate of the applicant. The more relevant paragraphs of the affidavit in support of the application read as follows:

8. That decision of the committee was influenced by improper recommendations by the Unit and that at the time of submitting its recommendations on the 1<sup>st</sup> respondent's complaint to the committee, the Unit had seized with jurisdiction.
9. Further that procedure and other statutory requirements applicable to the Unit were not complied with, and thus the Unit did not discharge its duty as required by the law, and a right to appeal existed.
10. I state however that due to the client's limited legal literacy, the client could not appreciate the decision of the committee in line with the aggrieving legal issues mentioned under paragraphs 8 and 9 hereinabove so that until the time we were instructed the time within which the file notice of appeal had elapsed.
15. That by virtue of the Tribunal's said ruling, the applicant's amended application for extension of file Notice of Appeal and Appeal filed in this Tribunal on 17<sup>th</sup> May, 2010 automatically terminated.

16. I state also that the hearing and determination of Applicant's above mentioned applications were not free of breaks and pauses. I state that the hearing of the 1<sup>st</sup> respondent's application mentioned under paragraphs 7 above which was strongly resisted by the applicant, had to proceed simultaneously with the hearing of applicant's application, the process that delayed early determination of the applicant's applications.
19. That construing the provisions of rules 11(3) and 14 of the Fair Competition Tribunal Rules, 2014 the Tribunal *suo mottu* ruled against the appeal on the reasons stated in the ruling of the Tribunal dated 8<sup>th</sup> December, 2014. I state that the applicant shall rely on the Tribunal Ruling of 8<sup>th</sup> December, 2-014 during hearing of this application. I state further that the Tribunal having struck out the applicant's appeal, this application is promptly made.
20. I state that this application is meritorious. That the record will show that the applicant has at all material times seriously prosecuted this matter which involves very significant legal issues touching the jurisdiction and legality of the 2<sup>nd</sup> respondent's decision. I state further that the reason(s) that led to striking out of the appeal arises out of interpretation of the rules governing procedure for filing and service of Memorandum of Appeal and Records of Appeal.

The respondents filed counter affidavit in opposition of the of the application. The applicant filed list of authorities to be relied upon on 16<sup>th</sup> April, 2015, while the 1<sup>st</sup> respondent filed list of authorities on 17<sup>th</sup> April, 2015. The 2<sup>nd</sup> respondent apart from filing counter affidavit did not file list of authorities to be relied upon.

On the date set for hearing, Mr. Nangi appeared for the applicant, whereas Mr. Dinani appeared in person and Ms Patricia Chenga appeared the 2<sup>nd</sup> respondent.

Mr. Nangi arguing for the applicant adopted the applicant's affidavit in support of the application. Mr. Nangi vehemently submitted that, the decision subject of challenge on appeal is illegality of the decision. He was very emphatic that the decision of the 2<sup>nd</sup> respondent was given without jurisdiction and that the ground of illegality of a decision is serious issue which this Tribunal is bound to consider. To buttress his argument Mr. Nangi cite the cases of **Kalunga and Co. Advocates vs. NBC Ltd 2006 TLR 235 and Yusuph Same & another vs. Hadija Yusuph, Court of Appeal of Tanzania at Dar es Salaam, Civil Application No. 1 of 2002.**

Mr. Nangi further asserted that, if the applicant is not afforded the opportunity to be heard, the alleged illegality will continue to exist and consequently this Tribunal's effort to dispense justice

will not be seen. Considering the time taken, that is, 7 years pursuing this matter diligently, Mr. Nangi requested this Tribunal to accord the matter the weight it deserves for the interest of justice.

The 1<sup>st</sup> respondent submitted that, the applicant insistence that they are been diligently pursuing this matter is totally wrong. Mr. Dinani requested this Tribunal to revisit the background of the matter way back 2009, after several applications of extension in which applicant has not complied with the law. Mr. Dinani requested this Tribunal not to grant applicant's prayer on the reasons that the applicant has demonstrated pure negligence in pursuing this matter and more so it is an abuse of this Tribunal power.

Mr. Dinani further argued that this Tribunal cannot allow negligence to continue because for 7 years the applicant has demonstrated negligence in handling this matter. The applicant being a multibillion international company for 7 years has been deepening its pocket for press of litigation. The time take, costs are not sufficient to remedy any negligence caused by the applicant to remedy the matter. Mr. Dinani submitted that the **Kalunga's case** is distinguishable, in circumstances of this case, because **Kalunga's case** was challenging the validity of decision in interpreting procedural law, and also priority of a Judge making

issue *suo moto* and making decision without affording a party an opportunity to be heard.

Mr. Dinani further submitted that, he will be prejudiced by the decision since it will be difficult to get witnesses who have already terminated their services with Emirates Airlines Mr. Dinani also submitted that the applicant has failed to account for the delay and has failed to provide sufficient cause for the delay.

In addition, Mr. Dinani submitted that the matter has been in this Tribunal for 7 years and throughout the years the applicant has been negligent in pursuing the matter which has resulted in injustice to the 1<sup>st</sup> respondent since he is required to appear and defend himself repeatedly over the same matter. Moreover, citing rule 32 (2) of FCT Rules, Mr. Dinani submitted that the applicant has caused waste of time and tax payer's money which should be condemned by this Tribunal.

On her part, Ms. Patricia Chenga, learned counsel for the 2<sup>nd</sup> respondent, adopted the 1<sup>st</sup> respondent's submissions and added that the Tribunal has the discretion to grant this application. Ms. Chenga further submitted that justice should be seen to be done. In addition, Ms. Chenga asserted that the matter has taken too long and has become annoying to the respondents, therefore the Tribunal should invoke rule 31(1) (d) of the FCT Rules to reject the application.

By way of a rejoinder, Mr. Nangi submitted that most of the issues raised in the respondent's submissions are not in the counter affidavits, thus, the Tribunal should not act on issues that are not on record. Mr. Nangi further submitted that the Tribunal is duty bound to grant the application in order to ascertain the alleged illegality. In addition, citing the case of **Felix Tumbo Kisima v. TTCL & Another (CAT) Civil Application no. 1 of 1997 (unreported)** case, Mr. Nangi submitted that even if the applicant or his advocate has been negligent the law still demands extension of time to be granted where there is allegation of illegality. Lastly, Mr. Nangi submitted that the applicant is looking for justice and that is a sufficient reason to grant the application.

As observed earlier, parties herein knocked on the Tribunal's doors for the first time in May 2009 when the Mr. Irfan Dinani, the 1<sup>st</sup> respondent herein, applied for extension of time to file notice of appeal (Tribunal Application No. 6/2009) followed by another application in June 2009, this time by Emirates Airlines, the applicant herein, (Tribunal Application No. 7/2009). These applications and subsequent applications between parties have been characterized with serious opposition on technicalities from the opponent party.

Basically, in considering applications for extension of time, we are guided by the Court of Appeal decision in **Yusufu Same &**

**Another v. Hadija Yusufu, Civil Appeal no 1 of 2002 (unreported)** which state as follows:

**“It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant (See Dar es Salaam City Council v. Jayantilal P. Rajani – CAT Civil Application No. 27 of 1987 (unreported) and Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda – Civil Application No. 6 of 2001 (unreported)”. (Emphasis by the Tribunal)**

Sufficient reason/cause has been broadly defined. In the case of **Yusufu Same & Another v. Hadija Yusufu, (*supra*)** the Court of Appeal stated as follows:

**“Generally speaking, an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time. This has been**

held in numerous decisions of the Court and other similar jurisdictions... But there are times, depending on the overall circumstances surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicant's advocate as was held in **Felix Tumbo Kisima v. TTC Limited and Another – CAT Civil Application No. 1 of 1997 (unreported)**. It should be observed that "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step". (Emphasis by the Tribunal)

Before **Hadija Yusufu Same's case**, the Court of Appeal in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambia, 1992 T.L.R. 185** held that when it is alleged that the challenged decision is illegal, then extension of time should be granted even if for that purpose alone because the Court has a duty to ascertain that allegation and take appropriate measures to put the matter and the record straight.

In addition, in another case between **Bank of Tanzania and Emerenciana Chrysostom, Court of Appeal of Tanzania (Dar es Salaam) Civil Application No. 44 of 2009 (unreported)**

the Court of Appeal accepted that circumstances other than good reason and the length of delay can amount to sufficient reason for granting an extension of time. Such circumstances could be chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted and the legality of the decision intended to be challenged. Also in **Kalunga and Company Advocates v. National Bank of Commerce Limited 2006 T.L.R. 235** the Court of Appeal held that when there are serious legal points involved then that is sufficient reason to grant extension of time.

We have carefully considered the affidavit evidence for and against the application together with the respective submissions and argument by the contenting parties in this matter. It is evident from the contents of paragraphs 8 and 9 of the applicant's affidavit that the applicant alleges lack of jurisdiction and non-compliance of the law and procedures on the part of the Unit of the 2<sup>nd</sup> respondent whose recommendations form the basis of the decisions intended to be challenged. Prior to this application, the applicant applied for extension of time on 10<sup>th</sup> October, 2012 in Application No. 5/2012. In that application, extension of time was granted by this Tribunal on the basis of same allegations of illegality stated in paragraphs 8 and 9 of the applicant's affidavit in support of the application. Our decision in Application No. 5/2012 was as follows:

“In the affidavit evidence of Kajal Mandania it is indicated that the decision being challenged is bad due to procedural irregularity and want of jurisdiction on the part of the committee which made the decision. In the circumstances, since the point at issue is the legality or illegality and/or validity of the decision sought to be challenged we are satisfied that sufficient reason has been shown for the granting of an extension of time to file a notice of appeal and to lodge an appeal in this Tribunal”.

That being the case, we see no reason to depart from our earlier decision that when an applicant alleges that the decision intended to be challenged is illegal then sufficient reason is shown for granting extension of time and we accordingly hold so.

In the event, and for the reasons stated above, this application is granted. Bearing in mind the circumstances of this case, we order the applicant to bear the costs of this application.

It is so ordered.

**Judge Z.G. Muruke – Chairman**

**Mrs. Nakzael L. Tenga – Member**

**Mr. Gregory L. Ndanu – Member**

**29/04/2015**

Ruling delivered this 29<sup>th</sup> day of April, 2015 in the presence of.....and Mr. Beda Kyanyari, Tribunal Clerk.

**Judge Z.G. Muruke – Chairman**

**Mrs. Nakzael L. Tenga – Member**

**Mr. Gregory L. Ndanu – Member**

**29/04/2015**