

Civil Reference No. 32 of 2005 Court of Appeal of Tanzania at Dar es Salaam S.N.Kaji, J.A	ETIENES HOTEL VS. NATIONAL HOUSING CORPORATION	<ol style="list-style-type: none"> 1. Plea of illegality is accepted principle as sufficient ground for extension of time but subject to diligence. 2. It is a principle of the law that special damage must be specifically proved by evidence under rule 14(2)(a) of Civil Procedure Code.
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Hon. Ramadhani, J. A.

RE: CIVIL REFERENCE NO.32 OF 2005

ETIENNES HOTEL

VERSUS

NATIONAL HOUSING CORPORATION

MY OBSERVATIONS

I highly congratulate your Lordship for your well researched and well reasoned draft. However, with due respect, I have the following observations.

1. ILLEGALITY: It is an accepted principle that a plea of illegality is a sufficient ground for extension of time, according to the cases you have cited; but subject to diligence. In the instant case, admittedly, there was only a small sign of diligence to seek redress when the

respondent N. H. C. applied for a review on 10.5. 2001, about 220 days from 7. 9. 2000 the date of the Judgment, without leave. It was struck out on 12. 8. 2003.

On 15. 10. 2004, about one year and two months from the date when the application for review was struck out, the respondent NHC applied in the High Court for extension of time in which to file a notice of appeal. The application was refused. Hence a similar application was filed on 26. 1. 2005 before a single Judge of the Court which was granted.

Thus, in my view, although the respondent did not account sufficiently for the delay, yet in the peculiar circumstances of the

case where the counterclaim itself is alleged to have been raised over 15 years out of time (to be specific 21 years) without leave, extension should be granted, failure to account for the delay notwithstanding.

2. Refusing extension of time will amount to blessing the illegality and awarding the applicant Hotel to reap from its 21 years total sleep and to punish the respondent NHC from its sleep of a relatively lesser period. But granting extension will not take away the applicant's right to reap what is right to it but will merely postpone it to a later date, depending on the outcome of the intended appeal.
3. COUNTER CLAIM: According to the decree at page 16, it would appear the counterclaim was based on two claims (i) special damages (ii) General damage. Both claims were granted as presented under order viii Rule 14 (2)

CPC. The decree is not clear whether Judgment was entered under Rule 14 (2) (a) or (b). But according to the respondent's affidavit in the High Court and before a Single Judge of the Court, it would appear it was under Rule 14 (2) (a). It is a principle of law that special damages must be specifically proved by evidence. Thus

granting special damages without proof under Rule 14 (2) (a) appears to be wrong, and this is one of the grounds for the intended appeal according to the above NHC affidavits. This was not canvassed by the learned Single Judge although it was before her in the NHC affidavit.

4. Granting extension of time will enable the Court to determine the alleged illegality and possibly to decide whether the counterclaim was properly proved under order viii Rule 14 (2) (a) CPC. That is why on the date of our discussion I thought it would be better if the

reference is refused so that the respondent NHC proceed to file the notice of appeal out of time as granted by the learned Single Judge of the Court. However, I am ready to go by the decision of the majority whichever way it may go.

I humbly submit.

S. N. KAJI, J, A.