IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

COMMERCIAL CASE NO. 9332 OF 2026

APJV LIMITED .... PLAINTIFF

VERSUS

TSK COMPANY TANZANIA LIMITED .... DEFENDANT

RULING

15/06/2026 & 16/06/2026

KINYAKA, J.:

The plaintiff sued the defendant and Kilombero Sugar Company Limited who is no longer part of the present suit, for breach of Crane Rental Agreement. It was averred by the plaintiff in the plaint that the defendant leased from the plaintiff, 130-ton crane for utilization at Kilombero Project Site for consideration of payment of specified sums which the defendant failed to pay. The plaintiff claimed that the defendant breached the agreement, unlawfully withheld payments due to the plaintiff, and unjustly enriched herself. She thus prayed for the following reliefs:

1. Payment of TZS 297,595,764 being outstanding crane rental charges equivalent to US$ 115,709.91;
2. Interest at commercial rates from the due date until full payment;
3. A declaration that the defendants are not contractually entitled to impose a penalty of Tanzania Shillings Four Million Six Hundred Twenty Thousand Only (TZS 4,618,764) per day, being equivalent to US$ 1,800 for delayed demobilization;
4. Costs of the suit; and
5. Any other relief this Honourable Court may deem just and equitable.

When the defendants were served with plaint, Kilombero Sugar Company Limited, who was the 2nd defendant prior to an order for amendment, raised two grounds of preliminary objection that the suit is bad in law and incompetent for failure to sufficiently disclose a cause of action against the 2nd defendant as required under Order VII Rule 1 (e), 5 and 11 (e) of the Civil Procedure Code, Cap. 33 R.E. 2023; and that so long as the plaintiff's claim is contractual, the suit is bad in law as against the 2nd defendant for want of privity.

On 22nd May 2026, when the suit was called for First Pre-Trial Settlement and Scheduling Conference, the plaintiff conceded to the 2nd defendant's preliminary points of law. Upon the plaintiff's concession, and upon his prayer for amendment of her plaint, I ordered the removal of the name of Kilombero Sugar Company Limited for wrongly being sued and for the plaintiff's absence of cause of action against her. I further ordered the plaintiff to file her amended plaint by 28th May 2026; the defendant to file her amended written statement of defence by 4th June 2026; and the plaintiff to file her reply to the defendant's written statement of defence, if any was to be filed by 11th June 2026. The suit was scheduled for First Pre-Trial Settlement and Scheduling Conference on 15th June 2026.

On 15th June 2026, both parties appeared through their advocates. Mr. Allen Albert Kaminda assisted by Mr. Elisha Kasala, learned advocates appeared for the plaintiff and Mr. Norbert Mlwale, learned advocate appeared for the defendant.

While Mr. Kaminda was ready to proceed with First Pre-Trial Settlement and Scheduling Conference, Mr. Mlwale informed the Court that the amended plaint was filed on 29th May 2026 contrary to the order of this Court of 22nd May 2026 which directed the amended plaint to be filed by 28th May 2026.

He submitted that the amended plaint was filed out of time without an order for extension of time. He prayed for expunction of the amended plaint from the record.

Mr. Kaminda admitted that the amended plaint was filed out of time due to the challenges they incurred during drafting and finalization that led to the filing of the same on 29th May 2026. He submitted that the overriding objective principle applies in the circumstance and prayed for dismissal of the defendant's prayer to expunge the amended plaint.

Mr. Mlwale reiterated his prayer upon the admission by the learned advocate for the plaintiff that the amended plaint was filed out of time. He argued that the overriding objective principle does not apply as the plaintiff has not applied for extension of time.

My reading of the record reveal that the plaintiff's amended plaint was filed on 29th May 2026, one day after 28th May 2026 when the plaintiff was required to lodge her amended plaint. As such, the amended plaint was field out of time contrary to the order of this Court issued on 22nd May 2026.

As to the consequence, while the defendant prayed for expunction of the amended plaint, the plaintiff urged the Court to apply the overriding objective principle to spare the amended plaint.

Notably, the Oxygen principle is enshrined under Order 4 and 5 of the Civil Procedure Code Cap. 33 R.E. 2023. Despite its objective to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes by among others, just determination of the proceedings, I find the same inapplicable in the present matter where there has been a defiance of the Court's order and filing of pleadings out of time.

The reason for noncompliance with the Court's order given by the learned advocate for the plaintiff amounts to neglect and sloppiness. The counsel was aware of the deadline date as he attended the proceedings of this Court on 22nd May 2026 when he applied for amendment of the plaint. Even in his submissions before the Court, he failed to categorically state the challenge he encountered the led to the filing of the amended plaint out of time. Mr. Kaminda's explanation that he was drafting and finalizing the amended plaint is meritless as the scope of the order for amendment was only to remove the name of Kilombero Sugar Company Limited from the plaint. Again, upon knowing that he was out of time, the plaintiff did not bother to apply for extension of time but proceeded to file the amended plaint out of time without the order of this Court.

Discernibly, it is now the position of law that the overriding objective principle is not a panacea of all wrongs. The principle cannot apply in instances like the present matter where there is a deliberate noncompliance with the order of the Court to file the amended plaint within time. I find fortification in the decision of the Court of Appeal in **Muse Zongori Kisere vs Richard Kisika Mugendi & Others** (Civil Application No. 244 of 2019 [2022] TZCA 640 (18 October 2022) at page4 through to 5] where it was held:

> *"From the above settled legal position, with respect, we do not accept the applicant's prayer to ignore the delay and proceed to determine the application on merit. Equally, we don't subscribe to the 1st respondent's proposition and invitation to disregard the delay because the issue of time limit is not a legal technicality that entitles the applicant to amnesty under the Overriding Objective principle enshrined under the AJA. On the contrary, it is settled that once the issue of time limitation is established, it has the effect of causing the jurisdiction of the Court to cease. We have consistently held that stance in a number of cases including* ***Njake Enterprises Ltd v. Blue Rock, Ltd and another****, Civil Appeal No. 69 of 2017,* ***Mayira B. Mayira and 4 Others v. Kapunga Rice Project****, Civil Appeal No. 359,*

***Mondorosi Village Council and 2 Others v. Tanzania Breweries Ltd and 4 Others**, Civil Appeal No. 66 of 2017 and **Filon Felicion Kwesiga v. Board of Trustees of NSSF**, Civil Appeal No. 136 of 2020 (all unreported)."*

Accordingly, I hold that the amended plaint has been filed out of time contrary to the order of this Court dated 22nd May 2026. Consequently, I strike out the amended plaint. Since the plaint is a suit, the plaintiff's suit cannot stand without the plaint. As a result, I struck out the plaintiff's suit with costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 16th day of June 2026.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
COMMERCIAL DIVISION

H. A. KINYAKA

JUDGE

16/06/2026