

IN THE HIGH COURT OF TANZANIA

AT DODOMA

CIVIL REFERENCE NO. 3 OF 2011
(ARISING FROM MISC. CIVIL APPLICATION NO. 9 OF 2010
OF HIGH COURT OF TANZANIA AT DODOMA)

JUMA MASINGIJA APPLICANT

Versus

GODFREY MAUKI RESPONDENT

16/10/2012 & 07/11

RULING

HON. MADAM SHANGALI, J.

In this Taxation Reference, the applicant **JUMA MASINGIJA** is seeking for leave of this court to be allowed to file his bill of costs out of time having lost his first application attempt before the District Registrar, the Taxing Master in Misc. Civil Application No. 35 of 2010. In that first application the applicant also filed a preliminary objection to challenge the legality of the purported counter affidavit filed by the respondent. It appears that the

Taxing Master decided to hear both the preliminary objection and the main application together.

Having heard the parties submissions the Taxing Master upheld the preliminary point of objection and declared that the purported counter affidavit filed by the respondent is yet to be known in the eyes of the law. Consequently he struck it out. At that juncture, the taxing master proceeded to determine the application and eventually concluded that even the affidavit filed by the applicant was bad in law in that the verification clause failed to disclose the source of information. The Taxing Master also found that the applicant failed to disclose the name of the advocate mentioned in the affidavit to have caused the delay to file the bill of costs in time. The application was thus dismissed.

Be as it may, the applicant is now before this court attempting his second bite. The centre of his contention is that following the decision in the Misc. Civil Application No. 1 of 2010 where he was declared a winner he started to seek for assistance in court on how to file his bill of costs. He avers that, being a layman and unaware of the legal technicalities and procedures he filed his bill of costs only to be told by the District Registrar that his bill of costs was out of time. Then he was advised by the same

District Registrar cum Taxing Master to withdraw his bill of costs and file an application for extension of time to file it. The applicant stated that he complied with the advice and filed his application for extension of time as advised but the District Registrar, as a Taxing Master dismissed it.

The applicant stated that apart from being a layman in legal matters and procedure, he had actively taken all necessary actions to pursue his matter and there is no element of any negligency on his part. He prayed this court to seriously consider the circumstances of this application and apply a liberal construction on the word sufficient course in order to advance substantial justice because there was no negligence or inaction on his part.

In support of his submission the applicant cited the case of **Martha Daniel vs. Peter Thomas Nko (1992) TLR 359.**

In response, the respondent **GODFREY MAUKI** recapitulated on the findings of the Taxing Master in Misc. Civil Application No. 35 of 2010 and stressed that the applicant's application was correctly dismissed for contravening the law. The respondent's written submission in this reference appeared to have been based on the applicant's affidavit filed in Misc. Civil Application

No. 35 of 2010 rather than the applicants affidavit filed in support of this very reference.

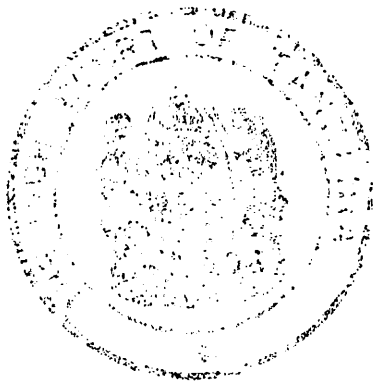
Having closely considered the submission filed by the parties and having taken into consideration the circumstances surrounding the whole matter I agree with the applicant that this is a correct application to apply a liberal construction of the word sufficient cause. I have reached that stand for the following reasons;

1. The applicant is a layperson alien to the legal technicalities and procedures.
2. From the begging when the applicant won his case he has been busy fighting to pursue his application, hence no negligence or inaction has been exhibited by him.
3. The applicant is fighting for a right cause for every successful party in a case should be allowed to reap the fruits of his judgment.
4. Where the circumstances allows like in this application, legal technicalities should not be let to override the substantial justice.

Indeed, in the case of **Ramadhani Nyoni vs Ms Haule and Comopany Advocates (1990) TLR 17**, it was held that in a case

where a layman, unaware of the proceed of the machinery of justice tries to get relief before the court, procedural rules should not be used to defeat justice.

For the above reasons, I am satisfied that there are sufficient reasons for the delay. The application is hereby granted and the applicant is given thirty (30) days extension from today to file his bill of costs.

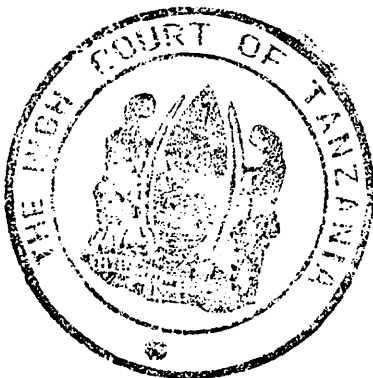



M.S. SHANGALI

JUDGE

7/12/2012

Ruling delivered to-date 07 December, 2012 in the presence of them applicant in person and in the absence of the respondent.




M.S. SHANGALI

JUDGE

7/12/2012