

**IN THE HIGH COURT OF TANZANIA**

**AT DODOMA**

**MISC. CIVIL APPLICATION NO. 28 OF 2016**

***(Arising from Civil Case No. 16 of 2003 of the High Court of  
Tanzania at Dodoma)***

**DODOMA BAPTIST CHURCH**

.....

**APPLICANT**

**VERSUS**

**1. JAMES KAUNDA**

.....

**1<sup>st</sup> RESPONDENT**

**2. WINFRED MPHANDE t/a**

**MWERA TRANSPORT**

.....

**2<sup>nd</sup> RESPONDENT**

27/10/2016 & 15/11/2016

**RULING**

**SEHEL, J.**

This is an application for extension of time for an applicant herein to file a Bill of Costs in Civil Case No. 16 of 2003. The application is made under Section 14 (1) of the Law of Limitation Act, Cap. 89 and it is supported by an affidavit sworn by Rev. John Mwangafike, Principal Officer for the applicant. The reason for the delay is advanced in the affidavit under Paragraphs 4 that reads:

“4. That, the respondent did not respond to the said letter and have not paid the said amount plus cost and interest ~~and~~”

thereto. And this had made the applicant to fail to file a Bill of costs in time."

In expounding the reason stated under Paragraph 4 of the affidavit, Ms. Masai, learned advocate for the applicant stated that though the judgment was delivered on 18<sup>th</sup> May, 2015 in favour of the applicant, the same was supplied to them on 30<sup>th</sup> March, 2016 and on 1<sup>st</sup> April, 2016 the counsel for the applicant wrote a letter to the counsel for the respondents requesting to be paid the decreed amount but there was no response. The counsel further submitted that during the time of waiting for response, it came to their knowledge that the time has run out for filing bills of costs. She was therefore of the opinion that the delay for filing bills of costs was outside the applicant's power, control and influence. With the reasons that there was delay in securing a copy of judgment and decree coupled with non-response from the respondents, then she believed sufficient reason has been advanced. She thus prayed for the application to be allowed.

Mr. Wasonga learned counsel for the respondents vehemently resisted the application by stating that no sufficient reason has been advanced by the applicant. It was his contention that Order 55 of the Advocates Remuneration Order GN 264 of 2015 does not require attachment of neither judgment nor order nor decree nor does it require issuance of a letter to the judgment debtor. He submitted that the application for extension of time was made after lapse of 18 months from the date the judgment was delivered and 11 months from the date the letter

was written. Mr. Wasonga further stated the issuance of a letter was an afterthought which should not be entertained and that the application is an abuse of the Court process. He referred this Court to the case of **Laurent Rugaimukamu Vs. The Editor Mfanyanyakazi Newspaper & Another [2001] T.L.R 79** where it was held that an application that has no good reason is an abuse of court process. He, therefore, prayed for the application to be dismissed with costs.

Ms. Masai rejoined by insisting that the reasons stated are sufficient and since the application is on discretion of the Court then they leave it to the court to determine it.

Obviously, this Court has power to extend time for filing applications where there is reasonable or sufficient cause to do so (See Section Section 14 (1) of the Law of Limitation Act, Cap. 89). An application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with reasonable or sufficient cause. This was held so in the case of **Mumello Vs. Bank of Tanzania [2006] 1 E.A at pg 227.**

What amounts to sufficient cause has not been defined. However, in determining whether there is sufficient cause certain factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant (See the case of **Tanga Cement Company Limited**

**Vs. Jumanne D. Masanga and Amos A. Mwalwanda Civil Application No. 6 of 2001 (Unreported) (CAT)).**

The applicant as I have adverted herein, fronted that the delay for failing to file Bills of Costs within time was due to the fact that it failed to obtain the copy of the judgment on time and that the respondents failed to respond to its letter requesting for payment.

The decision of this Court was delivered on 18<sup>th</sup> May, 2015 and the copy of it was certified and supplied to the applicant on 30<sup>th</sup> March, 2016 after a lapse of nine (9) months and eighteen (18) days. The application for extension of time was lodged on 29<sup>th</sup> June, 2016 after the lapse of ninety one days from the date the applicant secured the copies of the judgment and decree.

Both counsels acknowledged that Bills of Costs has to be filed within sixty days from the date of the costs awarded as stipulated under **item 21 of Part III of the Schedule to the Law of Limitation Act, Cap. 89** (see the case of **M/S Sopa Management Ltd Vs. M/S Tanzania Revenue Tanzania Authority, Civil Appeal No. 25 of 2010 (Unreported)**). Unfortunately there is no explanation as to why the applicant failed either to make its application for extension of time as soon as possible or to take necessary steps to lodge its Bills of Costs on time from the date the costs were awarded. As correctly submitted by Mr. Wasonga, the applicant was not required to issue letter to the respondents. Thus the applicant showed lacked of diligence and has no valid

explanation for such unnecessary delay of ninety one days from the date when it secured a copy of the judgement. I see no reason advanced by the applicant let alone sufficient reason to grant extension of time. The application is therefore dismissed with costs. It is so ordered.

**DATED at Dodoma** this 15<sup>th</sup> day of November, 2016.



**B.M.A Sehel**

**JUDGE**

Ruling delivered at Dodoma in open court, under my hand and seal of the court, this 15<sup>th</sup> day of November, 2016 in the presence of Mr. Wasonga, learned advocate for the respondents also holding brief for Mr. Nyabiri, learned advocate for the applicant. The right of appeal is fully explained to parties.



**B.M.A Sehel**

**JUDGE**

**15<sup>th</sup> November, 2016.**