

**IN THE UNITED REPUBLIC OF TANZANIA
THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION No. 479 OF 2019

*(Originated from District Land and Housing Tribunal for Temeke District at
Temeke in Taxation Cause No. 362 of 2018 delivered on 10th May, 2019
before Hon. Kirumbi)*

ASM (T) LIMITED.....APPLICANT

Versus

LUSEKELO MWAKIBETE.....1st RESPONDENT

SARAH DIOTREPHES MMARI.....2nd RESPONDENT

FRANCIS LUKWARO.....3rd RESPONDENT

RULING

29th May, - 30th June, 2020

J. A. DE-MELLO J;

Under section 8 of the Advocates Remuneration Order, 2015 GN 264 of 2015, the Applicant has moved this Court seeking to extend time within which to file Reference, accompanied by Affidavit of **Nzaro Nuhu Kachenje**, Counsel for the Applicant. Service been effected, with the Respondents jointly, lodged their Counter Affidavit on **23rd October, 2019**, resisting the same. Written submissions were preferred in support of the Application in which the Applicant submitted that, the ruling on the disputed Bill of costs was delivered on **10th May, 2019**, with a request of the copy on the **15th May, 2019**, not forthcoming despite several follow ups. That, it is until the

26th June, 2019 when it was furnished and, hopelessly out of time, against the **twenty one (21) days** that, the law prescribes. It is the Applicant's further submissions that, the impugned decision is illegal upon which the Taxing Officer wrongly arrived at, based on Tax invoice and, not EFD receipt. The case of **Principal Secretary, Ministry of Defence and National Service vs. Valambhia (1992) TLR 185** was cited to expound on it which held;

"If the point of law is at issue is illegality or otherwise of the decision being challenged, that is sufficient importance to constitute "sufficient reason" for extending time."

Opposing the Application, **Counsel Isaya Gibson Matambo**, for Respondents argued that, the application is devoid in merits and, thus liable to be dismissed with costs, as nothing tangible has been exhibited for the delay, other than negligence. In fact, there was no need of accompanying the Reference if at all, with the copy of the ruling as has been laid down in the case of **Carlos Albert Kobe vs. Yusta William Kanoti, Misc. Civil Application No. 857 2016, High Court of Tanzania, at Dar es Salaam** where it was held;

"Lapse, in action or negligence on part of the applicant seeking extension of time, does not constitute sufficient cause to warrant extension of time."

Also the Respondents cited the case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian**

Association of Tanzania, Civil Application No.2 of 2010 (Unreported) where it was held that;

“The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take”

The above notwithstanding, the Applicant took almost **fifty eight (58)** days without taking any steps to file. Citing the case of **Tumsifu Kimaro vs. Mohamed Mshindo, Civil Application No. 28 of 2017**, where it was held that;

“It is settled that, an application for enlargement of time, the applicant has to account for every day of the delay...”

That, the illegality alleged in **Order 58 (1)** of the **Advocates Remuneration Order, 2015** in which the issue related to EFD receipts is purely tax issue which is to be dealt with Tax Boards and not Taxing Officers in the Courts of law, hence this Application be dismissed with costs. No rejoinder has been filed by the respective party, which then leaves the Court with two main issues which needs determination;

- I. Whether, there are sufficient reasons adduced by the applicant to be granted extension of time.**
- II. Whether, the decision is tainted with serious illegalities which may amount to sufficient reason to grant extension of time to allow filing of reference to this Court.**

Commencing with the first issue, from the Affidavit, the Applicant had attached the copy of the letter and marked as **ASM-2**, as well as record **Chamber Summons** filled on **20th September, 2019** it is evident that,

time had lapsed. The decision in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)**, formulated guidelines for Courts to follow when dealing with the issues of the extension of time as follows;

"(a) The Applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

Vividly evident, from **26th June, 2010** up to **19th September, 2019** the Applicant ought to account for each day of delay, which he didn't. Much as requested for the copy of the ruling after five days of the deliverance of the said decision, but without proofs for follow ups, raises eyebrows. True, writing a letter alone is one thing while proof for pursuing the response is another. **Muruke J;** had in the case of **Carlos Albert Kobe vs. Yusta William Kanoti, Misc. Civil Application No. 857 of 2016, High Court of Tanzania, at Dar Es Salaam** where by it was held;

"Lapse, in action or negligence on part of the applicant seeking extension of time, does not constitute sufficient

cause to warrant extension of time.” At page 3 she quoted the case of **Al Imran Investment Ltd vs. Printpack Tanzania, Misc. Civ. Cause No. 128/97** where **Nsekela J;** stated that;

“Applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation.”

The Applicant had a duty to explain whether he made any effort on obtaining the copy of a ruling after writing the letter requesting for it and what made him delayed to file this application even after obtaining the copy. Dealing with the second issue, this court is of the opinion that, Bill of Costs is not a tax dispute matter, which is governed by the **Advocates Remuneration Order, 2015** on the remuneration of an advocate by a client and also for the taxation of costs between a party and another party-in contentious and non-contentious matters (**Order 2 of Advocates Remuneration Order, 2015**), as opposed to Tax Administration which addresses tax issues extensively. **Order 58(1)** of the **Advocates Remuneration Order, 2015** stipulates that;

“Receipts or vouchers for all disbursements charged in a bill of costs (other than witness allowances and expenses supported by a statement signed by an advocate) shall be produced at taxation if required by the taxing officer.”

This order clearly makes the production of EFD receipts, during taxation optional and, only where it is required by Taxing Master.

In the case of **Salehe Habib Salehe vs. Manjit Gurmukh Singh and Another, Reference No. 7 of 2019, High Court of Tanzania, Land Division at Dar Es Salaam** it was held that;

"Presentation of EFD receipts and non-compliance by the decree holder of the Tax Administration Act and VAT Act in taxation of bill of costs cannot stand. The said pieces of legislation (Tax Administration Act and VAT Act) as we have seen hereinabove, are useful in regulating tax matters and would, come into play when and only if, for instance, an advocate's tax books are not in order as assessed by the regulator, that is, TRA"

In **M/S Bukreef Gold Limited vs. Tax Plan, Associates & Another, Misc. Commercial Reference No. 3 of 2017, Mruma J;** held that,

"On the EFD receipts, I would like to define what EFD (Electronic Fiscal Device) is EFD machine designed for use in business for efficient management control in area of sales analysis and stock control systems and which correctly observed by the Taxing Officer EFD receipts are of relevant in tax matters. There is no provision in the Advocates Remuneration Order, 2015 (GN.264 of 2015) which requires proof of payment by production of EFD's receipts. EFD receipts may be relevant when there is a dispute as to whether one pays taxes or government revenues or not".

Having said that, I see no point of illegality or error occasioned by the Court on deciding the matter at hand at the lower Court as it did, not being a tax case, that requires production of EFD's receipt. I must conclude that the Applicant has not demonstrated any good cause that would entitle him extension of time for failing to abide to rules governing the same.

In the result, this Application fails and is, accordingly, dismissed with costs.

It is so ordered.




J. A. DE- MELLO

JUDGE

30th June, 2020