

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

CIVIL REFERENCE NO. 4 OF 2019

MUNA ALPHA KUNDYA -----APPLICANT

VERSUS

FARAJA RAJAB KUNDYA -----RESPONDENT

RULING

Date of last order: 06.11.2019

Date of Ruling: 14.02.2020

Ebrahim, J.

The applicant has filed the instant civil reference praying that the order of extension of time by the taxing master allowing the respondent to lodge bill of costs be quashed and set aside. The respondent upon being served with a copy of the application filed notice of preliminary objection raising two points. The first point of objection is that the application is incompetent for wrong citation of the law; and the second limb of objection is that the application has been filed out of time.

Being that the respondent had no representation, the court ordered the points of objection to be argued by way of written submission and set a schedule thereto. Upon perusal of the documents pertaining to this matter, I found that the applicant filed the reply outside the time frame set by the court on 06.11.2019 without leave. The set date to file reply by the applicant was on/ before 03.01.2020 but the applicant filed the reply on 10th January 2020. It is apparent that the applicant's counsel did not comply with the schedule and this is an abuse of court process. Time and time again this court has emphasized on the obligation to follow court order. In the case of **TBL Vs. Edson Dhobe**, Miscellaneous Application No. 96 of 2006 (unreported) this court had this to say:-

“Court order should be respected and complied with. Court should not condone such failures. To do so is to set a bad precedent and invite chaos. This should not be allowed to occur. Always Court should exercise firm control over proceedings”

I subscribe fully to the above holding. All in all written submissions are equivalent to a hearing therefore non filing of the same or failure to comply with the set schedule amounts to non-appearance or in

other circumstances want of prosecution (see the case of **Fredrick A. M. Mutafurwa Vs CRDB (1996) Ltd & Others**, Land Case No. 146 of 2004.

From that background therefore, my decision shall solely base on the submission by the respondent only.

I have carefully gone through the submissions by the respondent which is mainly premised on the issue that the application has been brought under the wrong citation; the application has been filed outside prescribed time without leave of the court; and that the affidavit is incurably defective.

I shall not recapitulate the submissions by the respondent but shall refer to them in the course of responding to the substantive issues.

Beginning with the issue of wrong citation, I find that the respondent has mis-construed the prayer by the applicant as the applicant seeks the intervention of this court on the order of extension of time issued by the taxing master and not that he is praying for extension of time. Therefore this point of objection is unmeritorious.

Coming to the issue of time, the date showing that the document was presented for filing was on 11th March 2020 and it was admitted by the registrar on 20th March 2020. Under the new e-filing system, the date of filing is the date that the applicant presents his documents for filing and then it can be admitted in the later date by the system. That being the position therefore and in terms of **Order 7(2) of the Advocates Remuneration Order, GN No. 264 of 2015**; the application was filed outside the prescribed 21 days from the date of the decision which was on 13.02.2019.

That being the position therefore, I would not belabor in addressing the issue of verification and accordingly dismiss the application with costs.

Accordingly ordered


R.A. Ebrahim
JUDGE

Dar Es Salaam
14.02.2020