

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**CIVIL REFERENCE NO. 7 OF 2018**

*(C/F Misc. Civil Application No. 61 of 2017, Taxation Cause No. 90 of 2015 & Original Land Case No. 14 of 2015 & Misc. Land Application No. 41 of 2015 in the High Court of Tanzania at Arusha)*

**LUCAS TOETIM MTENGA .....1<sup>st</sup> APPLICANT**

**AMAN CENTRE FOR STREET CHILDREN .....2<sup>ND</sup> APPLICANT**

**RUBY HOLDING .....3<sup>RD</sup> APPLICANT**

**ROAMABEL INVESTMENT LTD .....4<sup>TH</sup> APPLICANT**

***VERSUS***

**EPHRAIM CHRISTOPHER MANASE MREMA .....RESPONDENT**

**RULING OF THE COURT**

**02/07/2020 & 02/10/2020**

**GWAE, J**

On 06 06. 2017, the applicants named herein above filed an application for extension of time to file taxation cause arising from Land Case No. 14 of 2015 and Miscellaneous Land Application registered as Misc. Land Application No. 41 of 2015 as before this court (**Opiyo, J**) which were struck out and dismissed with costs on the 1<sup>st</sup> September 2015 and 24<sup>th</sup> August 2015 respectively. The said Land Case and Misc. Land Application were evidently filed by the respondent herein and another person, namely; Freedom Financial Services Ltd.



The records further reveal that, immediately after the dismissal order and the one striking out the respondent's cases, the applicants timely filed their Taxation Cause No. **90 of 2015** which was however marked withdrawn by this court (Rumisha-DR) on 23<sup>rd</sup> November 2016 with leave to re-file at the instance of Mr. Salim, the learned advocate for the applicants. The applicants were given fourteen (14) days within which to re-file.

Nevertheless the applicants failed to re-file the same within the period given by the Deputy Registrar of the Court as a result they filed an application for extension of time to re-file the taxation cause out of time via Misc. Civil Application No. 248 of 2016 but the same was also withdrawn by the court (Rumisha, DR) at the instance of the applicants' counsel, Mr. Kimaay on the 18<sup>th</sup> day of May 2017. The applicants subsequently and tirelessly filed the application for extension of time of re-file the application for bill of costs whose decision by the DR led to this reference.

Upon considering the parties' written submissions for and against the applicants' application for an enlargement of time, the Dispute Registrar of this court (**Hon. Nkwabi-DR**) made an order declining to exercise his discretion to grant the sought extension of time and held;

"Having observed as I have tried to show herein above, I am of the considered view that the current application should be dismissed as



the sufficient cause has not been shown by the applicant to grant extension of time to file taxation application. If detriment is caused to the applicants because of the dismissal of this application, then (sic) the blame ought to be shouldered on the counsel for the applicants and not otherwise. The application stands dismissed with costs”.

Following the dismissal by the DR of the applicants’ application for leave to file an application for taxation out of the prescribed period, the applicants are now before this court by way of reference made under Order 7(1) of the Advocates’ Remuneration Order, 2015 G.N. No. 264 of 2015 praying for the following orders;

- i. That, this court be pleased to judicially interfere decision of the DR dismissing the applicants’ application for extension of time to file taxation cause out of time
- ii. Costs of this application be provided.
- iii. Any other relief (s) the court may deem fit and just to grant.

On the 23<sup>rd</sup> May 2020 when this application was called on for hearing, the parties’ advocates namely; Mr. Ipanga Kimaay and Mr. Miraji Ngereka for the applicants and respondent respectively, prayed and obtained leave to dispose of the application by way of written submissions. At the moment it suffices to heartedly thank the parties’ advocates who vividly prepared and filed their

respective written submissions as the same are fruitful towards making of this ruling.

Having considered the parties' affidavits in this court and those affidavits in respect of the applications made before DRs and their respective written submissions, I have noted that, the main contentious issue between the parties is 'whether the applicants had accounted the days of delays to justify grant of extension of time'. On the part of the applicants, the cause of delay was awaiting of a report from the Business Registration and Licensing Agency (BRELA) as to status of Freedom Financial Services Ltd who was the 2<sup>nd</sup> plaintiff in the Land Case No. 14 of 2015. The said Freedom Financial Services Ltd is seen to have been wound up by this court (**Moshi, J**) on 26<sup>th</sup> June 2016 vide Miscellaneous Civil Application No. 5 of 2014

I have also taken into account that, the fact that applicants' former application for bill of costs (90/2015) was timely filed but the same was lucidly withdrawn on 23. 11. 2016 with leave to refile. The re-filing was not done as ordered by the DR as a result on **21/12/2016**, the applicants filed an application for extension of time within which to refile the taxation cause (Misc. Civil Application No. **248 of 2016**) which was also withdrawn on 18. 5. 2017 followed by the applicants' act of filing of a subsequent application of the same nature (Miscellaneous Civil Application No. 61 of 2017) on **6.6.2017**.



Since it is trite law that, the period within which a matter was pending in a court is excludable or in other words it is the records /proceedings which speak by themselves. Hence in our case, the period within which proceedings between the parties were undoubtedly pending in the court is excluded as correctly and authoritatively held by the Court of Appeal in **Citibank Tanzania Limited vs. TTCL and 4 others**, Civil Application No. 97 of 2003 (Unreported), where it was stated and I quote:

“The delay was not deliberate as urged by the counsel the time taken during pendency of Civil Application NO. 64 of 2003 until it was struck out”.

In view of the above precedent, It follows therefore, the applicants ought to have accounted days of delays from 7/12/2016 to 21.12.2016 (**14 days**) when the leave granted to re-file expired to when the applicants’ application no. 248 of 2016 was filed and from 18/05/2017 to 06.06.2017 (**19 days**) when the applicants’ application no. 248 of 2017 was withdrawn to when applicants’ application no. 61 of 2017 was filed.

That being the position, this court is now bound to ascertain if the applicants had accounted for the delay of the days aforementioned. As envisaged by the sworn affidavit of the applicants’ advocate (**Mr. Ipanga Kimaay**) duly filed on 6.6.2017, the applicants had accounted for only delays from 19/5/2017

to 30/5/2017 (11 days) leaving out delays of fourteen (14) days explained herein above (from 7/12/2012 to 21/12/2016) after expiry of 14 days leave to re-file granted by the DR and six days that is from 30/5/2017 to 5/6/2017. For the sake of clarity paragraph 12 of the affidavit which contains a reason for delay is herein under reproduced;

“That, since 19/5/2017, I did travel outside Arusha and return on the 30/5/2017”

The learned DR rightly questioned the above given reason on the ground that, the applicants’ assertion was not supported by any tangible evidence, the finding which I uphold as the reason for delay given above does not suffice since the deponent does even state where he went and what means of transport was used to travel from and to Arusha. This kind of assertion, in my considered view, is not on itself sufficient.

Worse still, the applicants have not bothered to account for the delay of fourteen (14) days when the grace period extended by the learned Deputy Registrar of the court (**Rumisha-DR**) expired to when Misc. Civil Application No. 248 of 2016 was filed. This is wrong on the part of the applicants’ advocate. The applicants were duty bound to account for each day of delays and not the manner he acted in their affidavit. The requirement imposed to applicants to account each day of delay has been judicially stressed in a chain of decision for



instance in the case of **Bushiri Hassan v. Latifa Lukio, Mashayo**, Civil Application No. 3 of 2007 (unreported) where it was stated;

'Delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken'.


In our instant matter, the applicants have not only given good cause for the delay from 19/5/2017 to 30/05/2017 but also have omitted to give reasons for their delay to re-file their application for bill of costs within the period of 14 days given in their favour and 5 days delay from 31/5/2017 to 6/6/2017.

Similarly, if I were to carefully look at the BRELA's report dated 22<sup>nd</sup> November 2016 which revealed that, the said company was wound up since 26. 6. 2015 by this Court (**Moshi, J**), hence there was therefore no need on the part of the applicants to be awaiting for the reports while there was already the court order to that effect. Assuming there was a need to obtain the report yet the applicants' application for bill of costs was withdrawn on 23. 11. 2016 when the BLRELA's report was already issued. Thus the days of delay from 7/12/2016 to 21/12/2016 were to be accounted for.


That said and done, the applicants' application is found lacking merit. The decision of the Deputy Registrar is therefore

left undisturbed. The applicants shall bear the costs of this application.

Ordered accordingly.

  
**M.R.GWAE**  
**JUDGE**  
**02/10/2020**

**Court:** Right of appeal explained

  
**M.R.GWAE**  
**JUDGE**  
**02/10/2020**

