

- ORIGINAL -

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY]
AT ARUSHA**

MISC. CIVIL APPLICATION NO. 14 OF 2019

(C/F Taxation Cause No. 55 of 2017, Original PC Civil Appeal No. 30 of 2016)

MIRISHI MEISHAA.....APPLICANT

Versus

EDWARD NGITORIA.....RESPONDENT

RULING

12/08/2020 & 09/10/2020

MZUNA, J.:

This is an application by Mirishi Meishaa, the applicant herein, to enlarge time within which to file reference against the decision of the Taxing Master in Taxation Cause No. 55 of 2017. The application is supported by an affidavit sworn by the applicant and opposed by the counter affidavit deposed by the respondent.

The facts leading to this application as they stand are quite simple. That the respondent (decree holder) filed Taxation Cause No. 55 of 2017 claiming a total sum of Tshs 13,383,000/= being the costs incurred in defending the PC Civil Appeal No. 30 of 2016 against the applicant (judgment debtor). The Taxing Master certified Tshs 9,200,000/= out of Tshs 13,383,000/= being the total Bill of Costs. The rest was taxed off. This did

not please the applicant because in his view the proper Taxation ought to have been 6,400,000/-. He was out of time to file reference, hence the instant application for extension of time. In essence he says there was wrong interpretation of the applicable law.

Hearing proceeded by way of written submissions. Mr. Jeremiah Siay, learned counsel represented the applicant whereas the respondent Edward Ngitoria enjoyed the services of Mr. Lengai S. Loitha, also learned counsel.

The main issue is whether there is sufficient cause shown for the delay?

The provisions of Order 8 (1) read together with Order 7 (1) and (2) of the Advocates Remuneration Order, GN No 264 of 2018 to which this application relates provides that before this court can extend time, there must be shown sufficient cause for the delay in filing the application for reference, which ought to have been filed within 21 days from the decision.

The main reason which has been advanced by the applicant as can be seen in the affidavit is that the delay was caused by late supply of copies from the court and issue of illegality. The applicant stated for the first ground that he came to collect the copies on several occasions but he was told the



same were not ready. He averred as well that the respondent's rights will not be prejudiced should the application be granted.

On the point of illegality, a complaint by the applicant is that the Taxing Master allowed instructions fee of Tshs 8,000,000/= excessive of 5% to 8% amount provided by the law. In that he claims the highest amount the respondent's counsel could have charged as instruction fee is 6,400,000/= not 11,500,000/= as he did. That, it is a point of illegality complained of in the intended reference, submitted the applicant. He referred the decision in the case of **Barclays Bank Tanzania Limited v. Tanzania Pharmaceuticals Industries and Three Others**, Civil Application No. 62/16 of 2018 (unreported) to buttress his point.

On the other hand, the respondent has strongly objected this prayer for the reasons that the applicant delayed himself in collecting the copies from the court. Further that the application has been brought as an afterthought because he did not apply for copies. Above all that the respondent has already lodged execution application. In that respect, he stands to be prejudiced should the application be granted.



In a brief rejoinder, the applicant stated that even if he could have applied for copies still the court was on vacation. That the intended reference has high chances of success on the ground that the taxing master taxed more than what is allowed by the law on instruction fees.

The governing principle in application for extension of time is that such right for this court to extend time is only matters of discretion whether to grant or refuse it depending on "*sufficient reason being given to explain the delay*" as it was so held in the case of **Livingstone Silay Haru v. Collinfred Temu** [2002] TLR 268, at page 271 (CAT).

Now the question is, has the applicant advanced sufficient reason for the delay. Second, is there a point of illegality as alleged?

As a general rule, reasons for delay should not be based on dilatory conduct. This was held in the case of **Shanti v. Hindoche & Others** [1973] EA 207, that:-

*"The position of an applicant for extension of time is different from that of an applicant for leave to appeal. He is concerned with showing "sufficient reason" why he should be given more time and the most persuasive reason that he can only show, as in Bhatt's case [1962 EA 497] is that **the delay has not been caused or contributed to by dilatory conduct on his part. But there may be other reasons and these are all matters***

of degree. He does not necessarily have to show that his appeal has a reasonable prospect of success or even that he has an arguable case but his application is likely to be viewed more sympathetically if he can do so and if he fails to comply with the requirement set out above he does so at his peril... [Emphasis mine]

The applicant's affidavit at paragraph 5, avers that the copy of the impugned ruling was supplied on 10th January, 2019 as per the copy of '*Fomu maalumu ya utoaji nakala za hukumu bure*'. The application was filed on 25th February, 2019.

Guided by the record, therefore, the applicant ought to have accounted for the days spent from supply of documents (10th January, 2019) to the date of filing of the current application (25th February, 2019). There is an unexplained delay of 44 days. The affidavit is silent on this. The applicant did not act very expeditiously or there was a "dilatory conduct".

More seriously, he did not apply for copies as well said by the respondent's counsel which suggest that the present application is an after thought. The allegation that the court was on vacation without supplying any reply letter to such request is unfounded.



However, there may be other reasons as well. Sometimes, the court, based on the issue of illegality can extend time "to put the record right" where as here, there has been raised a point of illegality, See the case of **Principal Secretary, Ministry of Defence; National Service v. Devran Valambhia** [1992] TLR 185 (CA).

The applicant relied on the case of **Barclays Bank Tanzania Limited v. Tanzania Pharmaceuticals Industries and Three Others** (supra). The court extended time for the reasons based on "interpretation of Rules" on when and under what circumstance parties can submit "witness statement". However that case is distinguishable from this case in that case unlike in the case at hand, the applicant requested for copies of the proceedings, ruling and Drawm order (see page 8 of the ruling).

In our case the impugned ruling was delivered on 28th November, 2018 (see para 3 of the affidavit). The applicant did not apply for same. In the case of **Selemani Jabiri v. Hon. Mary Chatanda**, Civil Application No. 139/02 of 2018, CAT at Arusha (unreported), the court (see page 7), allowed the application for leave to file appeal out of time after finding (among others), that *"the applicant has shown good cause for the delay to file appeal*

as he was waiting to be supplied with a copy of the proceeding in the High court which he had promptly requested."

The applicant in our case showed slopness in dealing with this application. The alleged point of illegality which is not even apparent on the face of the record, cannot cure the remedy. This anomaly shows that the application has not been brought in good faith. It was held in the case of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 cited with approval in the case of **Sebastian Ndaula v Grace Rwamafa** (Legal Personal Representative of Joshwa Rwamafa), Civil Application No. 4 of 2014, Cat (unreported) that:-

*"It is trite law that an application before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, **act very expeditiously** and that **the application had been brought in good faith.**" [Emphasis added]*

That said, application for extension of time to file reference which was brought not in good faith lacks merit and is hereby dismissed with costs.

10/9/2020

X 

Signed by: M G MZUNA JUDGE