

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

AT DAR ES SALAAM

REFERENCE NO. 13 OF 2019

(Arising from Misc. Civil Application No. 664 of 2018)

**LEGAL LINK ATTORNEYS.....APPLICANT
VERSUS**

TIB DEVELOPMENT BANK..... RESPONDENT

RULING

This reference is against the decision of the Deputy Registrar refusing an application for extension of time to file an application for taxation of costs. In the said application, the reason for delay was hinged on the ground of misplacement of Misc. Civil Cause No. 593/2016 which instead of being assigned to the Deputy Registrar was assigned to honorable Judge Mkasimongwa then re-assigned to honorable Judge Magoiga, following transfer of the predecessor Judge.

When Misc. Civil Cause No. 593/2016 came for the first time before honorable Magoiga, J, on 26/9/2018, Ms. Irene Swai the learned Counsel for applicant conceded that the application was improperly before the Judge and asked for

it to be returned to the Judge in charge for the later to place it before the proper officer. Mr. Mohamed Muya learned Counsel for respondent, stressed for the application to be struck out, where honorable Judge Magoiga ultimately struck it out.

On the same date, to wit 26/9/2018 the applicant Counsel wrote a letter requesting for copy of ruling/order, which the same was supplied on 18/10/2018. On 30/10/2018 the applicant presented for filing an application for extension of time which was registered as Misc. Civil Application No. 664/2018. On 25/7/2019 the Deputy registrar dismissed it on the ground of negligence on the part of the applicant, on the explanation that, the applicant was the author and to blame for misplacement of Misc. Civil Cause No. 593/2015, for reason that it was prepared in a manner which does not suit bill of costs rather it was prepared like an ordinary civil application with a chamber summons supported by affidavit.

To my view, faulting an application for delay on a mere form or format of an erstwhile application, amount to an error. I note with the learned Counsel for applicant that misplacement of Misc. Civil Cause No. 593/2015 which was committed at the stage of assignment, which is an

administrative action and exclusive domain of the Court, was a fault of the Court itself. It was wrong for the Deputy Registrar to heap blame to the applicant for a misnomer committed by the court. I wonder as to why this phantom argument cropped up, if the fault was for the applicant to file an application by way of chamber summons and affidavit, how the instant application made by way of chamber summons and affidavit landed to the Deputy Registrar on first assignment without losing it is way. Or they want to suggest that the applicant had agglutinated a red tag or flag showing that it was a bill of costs or ought to be assigned to the Deputy Registrar?

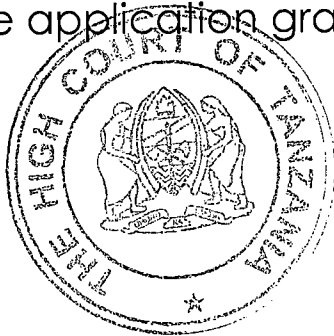
Be as it may, after the anomaly was detected on the first application could be remedied administratively or by way of striking it out (as a last resort) to pave way for refiling a fresh application as was done in the instant matter. It is unfair for the same court which mismanaged the former application, to rule that a door for refiling is open, afterward close it and block the applicant from accessing the door of justice. It will sound legerdemain or like a game or say that you give something with your right hand and take it back with your left hand.

A question as to whether the format of application or modus operandi the applicant is handling his matter is proper or not, cannot be entertained at a stage of an application for extension of time. And therefore, the Deputy Registrar is faulted for deliberating it at that stage.

That said, I have not seen any negligence on the part of the applicant for delay in filing an application for extension of time.

The decision of the Deputy Registrar is reversed. The applicant is allowed to present an intended application within fourteen days, counting from the date herein.

The application granted. No order for costs.



E.B. Luvanda
Judge
13.10.2020