

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MBEYA)**

**AT MBEYA**

**MISCELLANEOUS CIVIL APPLICATION NO. 15 OF 2018**

(From Bill of Costs No. 167 of 2017 at Mjini Primary Court. Originating from  
Civil Case No. 73 of 2017 at Mjini Primary Court.)

**ROBATIA MWINUKA.....APPLICANT**

**VERSUS**

**KIKUNDI CHA KINDA (NANCY SANGA).....RESPONDENT**

**RULING**

Date of Last Order: 10/12/2019

Date of Ruling : 28/02/2020

**MONGELLA, J.**

The Applicant is seeking for extension of time within which to file a reference on Bill of Costs No. 167 of 2017 at Mjini Primary Court. The Application is made under Order 8 (1) of the Advocates Remuneration Order, 2015, G.N. No. 264 of 2015 and is supported by the affidavit of the Applicant. The Applicant was represented by Mr. Amani Angolwisye while the Respondent was represented by Mr. Simon Mwakolo, learned advocates. The application was argued by written submissions.

In the affidavit in support of the application as well as in the written submissions by Mr. Angolwisye, the Applicant advanced two main reasons

for seeking extension of time. First is illegality and second is sickness of the Applicant.

On the issue of illegality, Mr. Angolwisye argued that the ruling was delivered contrary to the law for involving a non-party in the initial case giving rise to the Bill of Costs. He argued so stating that the impugned Bill of Costs emanated from Civil Case No. 73 of 2017 in which the parties were Kikundi cha Kinda (Nancy Sanga) versus Robatia Mwinuka while the impugned Bill of Costs was between Hanansi Nyaisanga and Robatia Mwinuka. He argued that this is a serious irregularity which can only be rectified in the reference the Applicant is intending to file. He contended that a Bill of Costs is a creature of court judgment/order and the judgment in Civil Case No. 73 of 2017 did not give relief as to costs to the party who won the case. He added that the ground of illegality has been good ground for extension of time. He cited the case of **Harrison Mandali and 9 Others v. The Registered Trustee of the Archdiocese of Dar es Salaam**, Civil Application No. 482 of 2017 in which the Court of Appeal stated:

*"...the alleged illegalities, irregularities and improprieties in the proceedings and the judgment of the High Court in Land Case No. 181 of 2009 are further ground for granting the extension of time sought in this matter."*

Basing on the above decision he prayed for the Court to grant the Appellant's application.

Responding to Mr. Angolwisye's arguments Mr. Mwakolo vehemently disputed that there is an illegality in the impugned Bill of Costs. He argued that the records do not reveal that there was Bill of Costs No. 167 of 2017

as stated by the Appellant's counsel because the said case number was registered as Civil Case No. 167 of 2017 between Hanansi Nyaisanga and Robatia Mwinuka and it emanated from Civil Case No. 167 of 2017. He argued further that from the records, Civil Case No. 167 of 2017 was registered as an independent case and if the same was termed as Bill of Costs No. 167 of 2017 as alleged by the Applicant's Counsel then it is obvious that the same does not emanate from Civil Case No. 73 of 2017 but rather from Civil Case No. 100 of 2017.

On the second ground, the Appellant and his Advocate claimed that the Appellant fell sick immediately after the ruling on Bill of Costs was delivered. That the said ruling was delivered on 6<sup>th</sup> December 2017 and he fell sick soon after the ruling and on 16<sup>th</sup> December 2017 he went for treatment at Mwanjelwa Dispensary whereby he was diagnosed with chronic typhoid. He said he was given medicine to use for a couple of months and could not get up for more than 110 days. To support this allegation the Appellant attached a medical chit (Annexure "RB1").

Responding to this ground Mr. Mwakolo also strongly disputed the Appellant's reason of sickness. He challenged the medical chit presented by the Appellant on the grounds that the same is not sufficient proof as it lacks the name of the hospital and the rubber stamp of the hospital. He argued that the Applicant has delayed for 113 days and has not accounted for each day of the delay as required under the law. He prayed for the Court to dismiss the Applicant's application for lack of sufficient reasons for the delay.

I have considered the arguments by both counsels and also gone through the affidavit in support of the application and the counter affidavit. I shall start with the second reason regarding sickness of the Appellant. I have gone through the medical chit presented by the Appellant and I agree with Mr. Mwakolo's stance that the same is not sufficient. The Appellant in his affidavit did not state which hospital he got treated. The hospital was stated by Mr. Angolwisye in his submissions to be Mwanjelwa Dispensary however, the medical chit does not suggest so as it lacks the name and the rubber stamp of the alleged dispensary. I thus find the medical chit not genuine and reject it accordingly.

On the issue of illegality, the Appellant has raised a legal point that the Bill of Costs involved a party who was not a party in the case that gave rise to the said Bill of Costs. Mr. Mwakolo argued that the case referred to as giving rise to the Bill of Costs is not the case that involved the parties in the Bill of Costs. He argued that the case between the Applicant and the Respondent was Civil Case No. 100 of 2017 and not Civil Case no. 73 of 2017. In my settled view, the truth of the matter can only be found in the records of the case. However, at this stage I cannot engage myself into scrutinizing the records as doing so I shall be engaging in resolving issues that ought to be resolved in a Reference to this Court.

The Court of Appeal as well as this Court has already settled that where an issue of illegality has been raised then it suffices to extend time in order for the illegality to be rectified. However, the illegality must be of sufficient importance and must not involve a long drawn process or argument in its determination. See: ***Kalunga and Company Advocates v. National Bank***

*of Commerce Ltd*, Civil Application No. 124 of 2005; *Aruwaben Chagan Mistry v. Naushad Mohamed Hussein & 3 Others*, Civil Application No. 6 of 2016 *Jehangir Aziz Abubakar v. Balozi Ibrahim Abubakar & Another*, Civil Application No. 79 of 2016 and *Lyamuya Construction Ltd v. Registered Trustees of Young Women Christian Association of Tanzania*, Civil Application No. 2 of 2010 (unreported).

In my considered opinion, I find the illegality raised by the Applicant to the effect that the Respondent not being a party in the case giving rise to the Bill of Costs became a party in the Bill of Costs to be of sufficient importance. I also find that the same shall not involve a long drawn process or argument as the court records shall immediately reveal the truth of the matter. On these bases I find the Applicant's application having merits and proceed to grant it accordingly. The Applicant is given fourteen (14) days from the date of this ruling to file his Reference. I make no orders as to costs.

Dated at Mbeya this 28<sup>th</sup> day of February 2019

  
**L. M. MONGELLA**

**JUDGE**

**28/02/2020**

**Court:** Ruling delivered in Mbeya in Chambers on this 28<sup>th</sup> day of February 2020 in the presence of both parties and Mr. Amani Mwakolo, learned Advocate for the Respondent also holding brief for Mr. Amani Angolwisye, learned Advocate for the Applicant.



  
**L. M. MONGELLA**

**JUDGE**

**28/02/2020**