

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBEYA**

**MISC. LAND APPLICATION NO. 01 OF 2019**

(From Reference No. 8 of 2017, Bill of Cost No. 10 of 2017, arising from Land Case No. 10 of 2015)

**FWANDA LIMITED.....APPLICANT**

**VERSUS**

**MARMO E. GRANITO MINES (T) LTD.....RESPONDENT**

**RULING**

Date of Last Order: 27/11/2019  
Date of Ruling : 19/02/2020

**MONGELLA, J.**

The Applicant is seeking to be granted leave to file a Reference against the Bill of Cost No. 10 of 2017 out of time. His application is supported by the affidavit of one Joseph Z. M. Mwendabwila who is the principal officer of the Applicant. The matter was argued by written submissions.

In his written submissions as well as in the affidavit filed in support of the application, the Applicant advanced one main reason for the delay being that his previous application was struck out for being defective. He argued that he lodged Reference No. 8 of 2017 on time only that the same was struck out on 12/12/2018 for being brought under a wrong

provision of the law. That following this situation he was time barred to file a new application for reference.

The Respondent was represented by Mr. Timotheo Nichombe, learned Advocate. Mr. Nichombe opposed the application arguing that the Applicant has not advanced sufficient reasons in accordance with the requirement of the law. To this effect he cited a number of cases which insist that sufficient reasons for the delay have to be adduced by the applicant for the Court to grant extension of time. The cases include: **Mathew T. Kitambala v. Rabson Grayson and the Republic**, PC Criminal Appeal No. 03 of 2017; **Regional Manager Tanroads Kagera v. Ruaha Concrete Co. Ltd.**, Civil Application No. 96 of 2007; **Abdallah S. Ndope & Others v. National Housing Corporation**, Civil Application No. 82 of 2011; **MEIS Industries Limited & Two Others v. Twiga Bankcorp**, Misc. Commercial Case No. 85 of 2014; **Godwin Ndewese & Karoli Ishengoma v. Tanzania Audit Corporation** [1995] TLR 200; and that of **The Registered Trustees of Archdiocese of Dar es Salaam v. The Chairman of Bunju Village Government & Others**, Civil Appeal No. 147 of 2006.

After considering the arguments by both parties I took the trouble to go through the documents in the Court file. It is evident that the Applicant filed Reference No. 08 of 2017 within the prescribed time however the same was struck out by this Court (Levira, J. as she then was) for having a number of defects. The said matter was struck out on 12<sup>th</sup> December 2018. Mr. Nichombe argued that the Applicant has not adduced sufficient reasons to warrant extension of time. I think he based his argument on computation of time from the date the decision on the Bill of Cost No. 10

of 2017 was issued by the Taxing Master. I find that the computation of time by Mr. Nichombe from that date is incorrect because the Applicant was basically under technical delay.

The concept of "Technical delay" applies where a party did not sit on his matter, but was pursuing it on either wrong forums or invoking wrong procedures which eventually rendered his matter being dismissed or struck out. This concept has been invoked by the CAT and this Court in a number of cases such as **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference no.18 of 2006 (CAT decision); **Luhumbo Investment Limited v. National Bank of Commerce Limited**, Misc. Civil Application no.17 of 2018 (HC Tabora, Utamwa J.) and **Mohamed Enterprises (T) Ltd v. Mussa Shabani Chekechea**, Misc. Civil Application no. 81 of 2017 (HC Tabora, Utamwa, J.).

In the above mentioned cases, the Courts were of the view that the time in which the applicant spent wrongly pursuing his right in court has to be removed in the computation of time. Time should thus start to run from the last event when his matter was dismissed or struck out for technical mistakes he committed in pursuing his claim. Only that, the last attempt must have been filed within time limitation. As I pointed out earlier, on the last attempt by the Applicant, that is, in Reference No 08 of 2017 the Applicant was within time.

From the foregoing it is my considered opinion that the Applicant was under technical delay and thus deserves to be granted extension of time to file the Reference out of time. The Applicant is given fourteen (14) days

from the date of this ruling to file his application for Reference on the Bill of Cost. Each party to bear his own costs.

Dated at Mbeya on this 19<sup>th</sup> day of February 2020.

  
**L. M. MONGELLA**  
**JUDGE**  
**19/02/2020**

**Court:** Ruling delivered in Mbeya in Chambers on this 19<sup>th</sup> day of February 2020 in the presence of the Applicant appearing in person.



  
**L. M. MONGELLA**  
**JUDGE**  
**19/02/2020**