

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION No. 828 OF 2018

(Arising from Miscellaneous Civil Application No. 132 of 2017)

ALLY MGUMBA.....APPLICANT

Versus

JACKSONI KYANDA.....RESPONDENT

RULING

22nd October, 2019 - 25th February, - 10th March, 2020.

J. A DE-MELLO J;

It is the Taxing Masters ruling in the **Miscellaneous Civil Application No. 132 of 2017**, that the Applicant is challenging and by way of Reference. The Affidavit of **Ally Mgumba**, the Applicant himself is accompanying it apportioning time taken to receive copy of the same ruling for filing the Reference it being mandatory. The said Ruling was comprised with serious illegality(ies) that needed to be addressed by this Court, in the event the Application is granted. Some of them and quite glaring is only if time will be extended and the reference if filed absence of the order for costs

Countered by the Affidavit of (the Respondent, the Application is opposed. which strongly denied all deposed facts in the Applicant's affidavit.

Both parties have complied to the scheduling order of this court save for the rejoinder from the Applicant and not mandatory. It is the Applicant's submissions that against the order by **Hon. Shangwa J;, on 22nd February, 2008**, in the **PC. Civil Appeal No.194 of 2004** that each party has to bear his own costs, strangely and against that the Respondent filed a **Bill of cost**, which the Taxing Master entertained and taxed the Applicant to **TZS 2,438,00/=**.

On his part the Respondent submitted while cautioning the Court of the misleading by the Applicant regarding which of which order of the **Court the Taxation** was before the Master. It is **Civil Appeal No. 194 of 2004**, which was before **Hon. Kalegeya J;**, dated the **8th July, 2005** which dismissed for **Want of Prosecution**, as opposed to **PC No. 194 of 2004** which applicant via his Advocate withdrew. He firmly averred that, the matter before the **Taxing Master** was correct to be taxed as it had nothing to do with **Hon. Shangwa's J;** order as alleged. and no irregularities. The **Order of 8th July 2005** had costs issued and properly so.

I have dispassionately considered and, weighed the rival arguments from both parties, and, feel instructive to reiterate as a matter of **general principle** that, whether or not to grant extension is purely the discretion of the Court, judiciously exercised. But that discretion is judicial and so it must be exercised In accordance with the rules of reasoning and justice, they are laid down norms for consideration which the case of **Mbogo vs. Shah [1968] E.A. Court of Appeal for Eastern Africa** held thus:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

Sixty (60) days from the date of the delivering the impugned ruling to the date of filling this Application of which is arguable and raises eyebrows. Is the delay caused by tracing and, following up the ruling as alleged sufficient cause? This to me associated with his **un due diligence and lack of seriousness** notwithstanding the lay background of the Applicant. In the case of **Ngao Godwin Losero vs. Julius Mwarabu, Civil Application No. 10 of 2015** at page 6 the Court of Appeal of Tanzania ruled that, I quote;

"To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be apprised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."

Certainly, the Applicant was not prudent and diligent enough to be on his toes, while abrasing himself with the applicable procedure for filing his reference, worse even when, the copies of the impugned ruling was delivered to him on **19th November, 2018**, but yet still the Application was filed on **31st December, 2018**, forty two (42) days later. He was supposed to also account for each day of yet another delay. In the case of **Bushfire Hassan vs. Latina Lucia Masanya, Civil Application No.3 of 2007** (Unreported) similar issue of delay was addressed and, held that;

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

The same was the position in the case of **Mustafa Mohamed Raza vs. Mehboob Hassanali Versi, Civil Application No. 168 of 2014** (Unreported).

The reason of ignorance of notwithstanding as was observed in the case of **Ngao Godwin Losero vs. Julius Mwarabu(supra)** with approval the case of **ARS. Bariki Israel vs. Republic Criminal Application No. ? of 2011, Charles Saugusi vs. Republic, Criminal Application No. 3 of 2011**

In the case of **Wambele Mtumwa Shahama vs. Mohamedi Hamisi Civil Reference No. 8.2016** while citing with approval the above cited cases had on its page 8that;

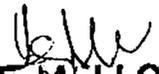
"It is trite law that ignorance of the law is not an excuse and hence, cannot stand as a good cause for delay. This position was stated in the case of Hadija Adamu Vs. Godbless Tumba, Civil Application No. 14 of 2013 where this Court held that: -

"As regards the applicants apparent ignorance of law and its attendant rules of procedure/ I wish to briefly observe that such ignorance has never been accented as a sufficient reason or good cause for extension of time" [Emphasis added].

Also in **Ngao's case (supra)**, it was held the same that:

"It has been held times out of number; ignorance of law has never featured as a good cause for extension of time (see/ for instance/ the unreported ARS. Criminal Application No. 4 of 2011, Bariki Israel vs. Republic; and MZA. Criminal Application No. 3 of 2011 - Charles Salugi vs. Republic." Excuses advanced is lame. As to the issue of illegality, the Reference in question was with regard to **Civil Appeal No. 194 of 2004 by **Hon. Kalegeya J**; which was dismissed for Want of Prosecution attracting costs be born in the course. **Annexure A1** the Ruling of the Taxing Master had not violated the law.**

With the foregoing findings, the Application has no merit and, is dismissed with no costs considering the status of the lay litigant.


J. A. DE-MELLO.

JUDGE

10/03/2020.

