

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TANGA DISTRICT REGISTRY
AT TANGA**

MISC. CIVIL APPLICATION NO. 22 OF 2020

(Arising from the Ruling of the Bill of Costs No. 28 of 2018)

HALIMA SHABANIAPPLICANT

VERSUS

TIMA MWAKIUNDE (Administrator of estates of the
late Abdallah Mwakiunde)**RESPONDENT**

RULING

MKASIMONGWA, J

In this matter the Applicant one Halima Shabani presented before the Court an application seeking for an order of extension of time within which to file a Reference against the decision of the Deputy Registrar which was delivered on the 3rd of April, 2020 with respect to Bill of Costs No. 28 of 2018. Besides that, the Applicant also prays for any other order(s) may the Court deem fit to grant together with costs. The application is brought by way of Chamber Summons under Order 8 (1) and (2) of the Advocates Remuneration Order, G.N. No. 264 of 2015 and it is supported by her own affidavit. On his part, the Respondent did not support the application; he therefore filed a Counter Affidavit.

On the 12th of May 2021 when the matter came for hearing, Mr. Ngomela, learned advocate, appeared for the Applicant whereas Mr. Erick Akaro advocated for the Respondent. In his submission, Mr. Ngomela argued that having being aggrieved by the decision of the Taxing Officer in Bill of Costs No. 28 of 2018 delivered on the 3rd of April, 2020 and for purposes of filing a Reference against it, on the 8th day of April 2020 the Applicant requested for a copy of the ruling which was supplied to him later on the 21st day of May 2020. As by the time the copy was given to the Applicant the later was already caught by the time limitation he came to the Court with this Application. Since the copy of the Ruling the subject of the intended Reference was not timely given to him, Mr. Ngomela invited the Court that it finds a sufficient or good cause, as to why the Applicant could not file the Reference within the time prescribed by the law, to have been established. As such the learned counsel humbly prayed that the application be granted.

In a reply submission Mr. Akaro, learned counsel for the respondent, submitted that the Applicant in the case at hand did not apply for Reference against the Ruling of the Taxing Master in Bill of Costs No. 28 of 2018 within the prescribed period of limitation for reasons of negligence on

his part. He contended that although the counsel for the applicant submitted to the effect that on the 8th of March 2021 the applicant wrote a letter to the Court requesting for the copy of the contested Ruling for Reference filing purposes, that fact was not among the averments in the affidavit filed in support of the application nor did the affidavit annex the copy of the alleged letter. Worse enough, the advocate stated that, on that respective date of request for a copy of ruling, the ruling was yet to be delivered. As to need to have the copy of the ruling in issue for reference purposes, Mr. Akaro submitted that Order 7 of the Advocates Remuneration Order as cited above does not require the Applicant in an application for reference to attach the copy of the ruling contested.

Mr. Akaro argued further to the effect that Order 7 (2) of the Advocates Remuneration Order requires a reference to be filed within 21 days from the date of the delivery of the contested ruling. As the contested ruling was delivered on the 3rd of April 2020 the Applicant ought to have filed the Reference by 24th of April 2021. This Application was filed on 29th May 2020, that is, 35 days from the deadline in which case the applicant had a duty to account for each day of delay as it was expounded in the case of **Safari Petro v. Boay Tlemu**: Civil Application No. 320 of 2017,

CAT (unreported) which duty he has not discharged. He contended that even though the Applicant alleges that he was supplied with the ruling on the 21st May 2020, the application was filed on the 29th May 2020, that is, eight days from when the same was supplied which delay days of were not accounted for.

The counsel for the Respondent proceeded by stating that in the instant matter there is no any illegality capable of being noted on the face of the record. He also referred the Court to the case of **Tanzania Rent a Car Limited v. Peter Kimuhu: Civil Reference No. 9 of 2020 at page 8** where the Court expounded the courts' reluctance in interfering the Taxing Officers decisions.

From the above, Mr. Akaro, advocate for the Respondent, submission that the Applicant has not shown sufficient and good cause and that the application should, therefore, be dismissed with costs.

In a brief rejoinder, Mr. Ngomela submitted that in this matter the Applicant has not pleaded illegality of the contested ruling as the basis of the Application. He further stated that whether or not the challenged decision was illegal, that can be properly raised and submitted on, in an application for reference. As to the date of the request of a copy of the

ruling which was, indeed, indicated as being the 8th of March, 2020, Mr. Ngomela submitted that it was a mere typing error for as matter of fact the ruling was delivered on the 3rd of April 2020. The error does not go to the roots of justice in this matter. Mr. Ngomela added that the instant Application ought to have been filed immediately after obtaining the ruling. However, the same was filed on the 29th of May 2020 which is eight (8) days from the date the copy of the ruling was availed to the applicant. The Applicant could not immediately file it as they had to conduct a necessary research for almost seven days so as to enable the matter be filed which period he considered to be reasonable. It was therefore his humble prayer that the application is granted as prayed.

Having considered the respective submission by the parties along with the records, it is crucial to note that in an application for extension of time, the Court has to consider whether the Applicant has demonstrated a sufficient cause. The Court in the case of **Blue Line v. East African Development Bank: Misc.** Civil Cause No. 135 of 95, CAT (unreported) as cited in the case of **Shicha Fatael Kisaya v. Sarah Obed Monyo: Misc.** Civil Application No 2017, it was held that;

"It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that power to grant this concession is discretionary, which discretion is to be exercised judicially upon sufficient cause being shown which has to be objectively assessed by the court."

Currently, there is no one specific definition of what amounts to a **"sufficient cause"**. As such, what amounts to a **"sufficient cause"** has to be determined by the Court according to the prevailing circumstances of each matter before it. The term **"sufficient cause"** has been defined by the Courts in various cases. In the case of **CRDB (1996) Ltd v. George Kilindu**: Civil Application No. 162 of CAT at Dar es Salaam as cited in the case of **The Attorney General v. Wafanyabiashara Soko Dogo Kariakoo Co-operative Society Ltd and 3 others** at page 15: Misc. Civil Application No. 606 of 2015 High Court of Tanzania at Dar es Salaam it was held that;

"What amounts to sufficient cause has not been defined but from cases decided by the court it includes among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the applicant."

This was similarly stated in the case of **Yusufu Same and Hawa Dada v. Khadija Yusufu**: Civil Appeal No. 1 of 2002, CAT (unreported).

The issue to be determined in the case at hand is whether the Applicant has exhibited to the Court a sufficient or good reason warranting grant extension of time? The reason advanced by the Applicant as to why he did not timely lodge the Reference case can be easily apprehended from the averments in Paragraphs 4 and 5 of the Affidavit filed in support of the Application which read as follows:

- "4. That being dissatisfied by the decision of the taxing Officer, on 8th March, 2020, I applied to be supplied with the Ruling so that I can be able to apply for reference to the Judge of the High Court, but the copy of the Ruling could not be supplied to me until 21st May, 2020.*
- 5. That the provision of the Ruling of the Bill of Costs No. 28 of 2018 by the Taxing Officer rendered me not able to file the Application for Reference within time provided by law."*

The paragraphs show the reason for delay as being the failure by the Court/Taxing Officer to furnish the Applicant with the copy of the Ruling intended to be challenged which reason is objected by the Respondent on grounds that, **One:** that there is no evidence to show if there was a request for a copy of the Ruling as there was no a copy of the letter requesting for the Ruling was annexed to the affidavit, **Two:** that the cited

letter of request was written prior to when the Ruling was delivered and;

Three: that the law does not provide to the effect that an application for Reference must be accompanied by the contested Ruling. I have noted from the record that the contested Ruling was, without being referred to in the Affidavit, was annexed to it. Going by the Ruling, the same shows to have been stamped with a Stamp bearing the following particulars: **"HIGH COURT OF TANGA: JUDGMENT DELIVERED ON 3/4/2020: DATE OF APPLYING 8/4/2020: JUDGMENT RECEIVED ON 21/5/2020: REGISTRY OFFICER SIGNATURE: Sgd"**. The stamp is self-explanatory. It tells of, among others, the date on which the Ruling was requested. I will agree with Mr. Ngomela that it was typing error where the affidavit mentioned the 8th of March, 2020 as the date the applicant had requested for the copy of Ruling. As submitted by Mr. Ngomela the error does not go to the roots of justice, hence it is curable. In that premise the application cannot be defeated on ground that we have no evidence to show if the applicant did request for a copy of the Ruling for there was no a copy of the letter requesting for the Ruling was annexed to the affidavit and that the cited letter of request was written prior to when the Ruling was delivered.

As to whether or not the Applicant had accounted for days of delay; it is now part of our laws that in an application for extension of time, apart from demonstrating to the Court that there was sufficient or good cause which hindered the applicant from taking step within the period of time limited by rules, the applicant has to account for each day of delay. This position was held by the Court in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**: Civil Application No. 3 of 2007 (unreported) as cited in the case of **Finca (T) Limited and another v. Boniface Mwalukisa**: Civil Application No. 500 of 12 of 2018, CAT at Iringa where it was held that:

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

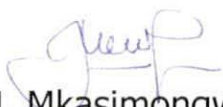
In the case at hand the Applicant contended that as from 24th of April, 2020 he was waiting for a copy of the contested Ruling which she was availed later on 21st of May, though she requested for it earlier on 8th of April, 2020. As from 22nd of May, 2020, she was undergoing a research to enable her properly file the case in Court. I have noted from the Chamber Summons filed, the same was, own, drawn and filed by the Applicant. In no way, the Applicant who is not the lawyer could have

successfully done that without the assistance of one knowledgeable of the law. In that premise, I find the period of seven day used in research and drafting the pleadings as being reasonable and the period is taken to have been accounted for.

In event I find the Applicant has established the sufficient cause warranting the Court to exercise its discretion and extend the time as prayed and that the days of delay have been accounted for. As a result, the application is hereby granted and time within to file a Reference is extended for twenty one (21) from today. No order as to costs.

Dated at Tanga this 8th Day of June, 2021




E. J. Mkasimongwa

JUDGE

08/06/2021