

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION No. 354 OF 2020

FAUSTINA AUDAX..... APPLICANT

VERSUS

NORVATUS DOMICIAN.....RESPONDENT

(From the decision of District Court of Temeke)

(Kihawa- Esg, SRM.)

Dated 12th March, 2020

in

Misc. Civil Application No. 28 of 2019

RULING

20th May & 29th June 2021

Rwizile, J

By Chamber summons supported by an affidavit, the applicant, Faustina Audax, under Rule 7(2) of the Advocate Remuneration Order, 2015 [GN No. 264 of 2015] and Section 14(1) and 19(2) of the Law of Limitation Act, [Cap 89 R.E 2019], made this application seeking for this court to grant the following orders that;

- 1. This court may be pleased to extend time to the applicant so as to file a reference on a bill of costs*
- 2. Costs of this application be provided for*
- 3. Any other relief this honourable court may deem fit and just to grant.*

In the affidavit sworn by Constantine Makala, he averred that the applicant delayed to lodge a reference for eight days because, during that time she was looking for an advocate to prepare and file the intended reference. He also averred that, the applicant failed to file this application from 9 April 2020 up to the date of filing which was 17th July 2020 due to the reason that, the Civil Reference no. 5/2020 was pending before this court.

At the hearing the parties were represented, for the applicant was Mr. Constantine Makala learned advocate, while the respondent enjoyed the services of Mr Francis, learned advocate. This application was argued orally.

Supporting the application, Mr Makala argued that on 12th March, 2020 the taxing master awarded the applicant 25,000/= out of 6,425,000/=. He said, they were aggrieved, they applied for copies of ruling on 23rd March, 2020 so that they could file a reference. He added that they were supplied with the same on 25th March, 2020, hence they filed a reference on 9th April 2020 only to find out that they were time barred, and the same was struck out on 16th July 2020.

He submitted further that, since they filed reference on 9th April 2020 it was 28 days while they ought to file the same in 21 days. However, he said, under section 19(2) of **[Cap 89 R.E 2019]** the law excludes days which were used when waiting for copies of ruling and proceedings.

He prayed for this court to exclude 13 days from 12th March to 25th march, 2020 and extend time for the applicant to file reference, as per their affidavit.

Disputing the application by adopting the counter affidavit, Mr Francis argued that, this application should not be granted, for the reason that, the applicant's affidavit was not genuine, according to him, there is no requirement of attaching a copy of ruling. He referred this court to order 7 of Advocate Remuneration Order. He vehemently argued that, there is no ground that requires supplying of the copy of ruling.

It was his view that, the delay was caused by negligence of the applicant. He said, the applicant was represented by Mr. Makalla learned advocate. In his view, it is

therefore not true that the applicant was looking for the advocate to prepare for the application. He therefore prayed for this application to be dismissed with costs.

Having considered the rival submission of the parties, the issue to be determined is whether this application can be granted. The law under order 7(1) and (2) of GN No. 263 of 2015 provides that, a person who has been aggrieved by the decision of a taxing officer may file reference to a judge of the High court within 21 days. For ease reference the same is hereunder reproduced;

7.-(1) Any party aggrieved by a decision of the Taxing officer, may file reference to a judge of the High Court.

(2) A reference under order (1), shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days of from the date of the decision.

Nevertheless, under the provisions of O.8(1)(2) of the orders, it provides for extension of time upon sufficient cause, the same states as hereunder;

8.-(1) The High Court may, subject to order 7 extend the time for filing a reference upon sufficient cause.

(2) An application for extension of time shall be made by way of chamber summons supported by an affidavit and be served to parties at least seven days before for hearing date.

In other parlance, the provision above is in line with section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019], which provides for sufficient cause, before an extension of time, like the matter at hand can be granted. In principle the reasons to grant or reject an application of this nature among many others, but the same is in the absolute discretion of the court. To hold so, I am fortified by the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012, where the Court of Appeal of Tanzania held inter alia that:

"...It is trite law that an Application for extension of time is entirely in the discretion of court to grant or refuse, extension of

time may only be granted where it has sufficiently established that the delay was with sufficient cause...”

The question here would be, did the applicant show sufficient cause. Answering this question would lead me to the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). In which principles to follow on whether to extend time were stated by the court as hereunder;

- i. The delay should not be inordinate;*
- ii. The Applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. If the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged*

Coming to this application at hand, it was stated that, a ruling of a taxing officer was delivered on 12th March 2020. The applicant applied for copies of the ruling and proceedings on 23rd March 2020, she was granted on 25th March 2020. She then filed a reference on 9th April 2020. Her reason for delay was waiting for copies of the ruling and proceedings. But it is shown that applicant applied for copies of the same on 23rd March which is 11 days after the ruling. Yet, she did not account for the same. It is also surprising that, after she applied for the copies, which were granted after 2 days, it took her 19 days to file reference. Technically she has delayed for 29 days. If 2 days are excluded which she was waiting for copies of ruling as per section 19(2) of the Law of limitation Act, she remains with 27 days. Since she was to prefer the application in 21 days, then, it is 6 days that are unaccounted for.

I have to say, I agree with the learned counsel for the respondent that attaching a copy of a ruling is not a requirement of the law as per order 7 of GN No. 263 of 2015.

After that being said, the rule and spirit of order 8(1) of the Advocate Remuneration Order should be complied with, that, the High Court may extent time upon sufficient cause.

The above notwithstanding, I have to say, the doors of reasons which courts have to consider before granting an application for extension of time are never closed. That is to say, the same should not be limited to the above named in the cited cases. That is why, apart from length of delay, negligence or apathy and if there is an illegality, still, in the case of **Joel Silomba v R**, Criminal Appeal No 05 of 2012, the Court of Appeal added that the court has to consider also the degree of prejudice to the opposite party if the application is granted.

In this matter as shown above, the applicant has failed to account for all days of delay. This, in my considered view is not shockingly inordinate. Considering the nature of the matter and the fact that there is amount of prejudice that may be caused on the other side, in the broad since of justice, this application is allowable.

The application is therefore granted. the applicant is given 14 days from the day of this ruling to file the appropriate application. since it is in favour of the applicant, I make no order as to costs.

AK. Rwizile
Judge
29.06. 2021



Recoverable Signature

X

A handwritten signature in blue ink, appearing to be 'AK. RWIZILE'.

Signed by: A.K.RWIZILE

