

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 12 OF 2021**

(Originating from the ruling of the District Court of Ilala at Kinyerezi in  
Misc. Civil Application No. 277 of 2019 dated 03/11/2020 before Hon. M.B.  
Mpaze, Taxing Officer)

**DANIEL DANGER NYAMUNGA..... APPLICANT**

**VERSUS**

**NOBLE MOTOR LTD.....RESPONDENT**

**RULING**

27<sup>th</sup> July 2021 & 06<sup>th</sup> August, 2021.

**E. E. KAKOLAKI J**

In this application which is supported by affidavit of the applicant one **Daniel Danger Nyamunga**, the Court is moved to extend time to him within which to appeal to this court against the decision of the District Court of Ilala at Kinyerezi in Misc. Civil Application No. 277 of 2019 handed down on 03/11/2020. The application is brought under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E 2019] hereinto referred as LLA. When the chamber summon was served to the respondent, she filed a counter affidavit seriously attacking the merits of the application. Following that resistance by the respondent parties agreed to dispose of the matter by way of written

submission in which submissions' filing schedule orders were issued by the court and complied with save for the applicant who did not mind to file his rejoinder submissions. Both parties were represented as the applicant enjoyed the services of Mr. Bitaho Marco while the respondent hired the services of Ms. Sharifa Mohamed both learned advocates.

Briefly before the District Court of Ilala in Misc. Civil Application No. 277 of 2019 the respondent filed the application for bill of costs against the applicant arising from Civil Case No. 45 of 2019, which was instituted by the applicant against the respondent but terminated in favour of the respondent. In its ruling delivered on 03/11/2020 in favour of the respondent a total amount of Tshs. 3,221,450/= was taxed against the applicant. Prior to that ruling the court had ordered the parties to dispose of the application by way of written submissions and set the matter for ruling on 03/11/2020. The ruling was delivered on the scheduled date in the absence of both parties as the applicant alleges to have travelled to Rorya, Mara Region in September, 2020 to nurse his seriously sick mother who was by then undergoing traditional medication at home before she passed away on 31/11/2020 and buried on 06/12/2020 at Mika Village. On making a follow up of the case when came back Dar es salaam from Rorya, the applicant noted his matter was already decided against his favour on the 03/11/2020 in favour of the respondent and by then he was already out of time to prefer an appeal against the said decision hence the present application.

It is the law that when moved under section 14(1) of the LLA, this court has unfettered powers to entertain and grant the application for extension of time within which to appeal against the decision sought to be challenged upon good cause shown by the applicant. What constitutes good cause there

is no laid down hard and fast rules. It depends on material facts deposed or advanced by the applicant to justify the reasons for the delay or any other sufficient reasons warranting grant of extension of time by the court. See the cases of **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, (CAT-unreported) and **Republic Vs. Yona Kaponda and 9 Others** (1985) T.L.R 84. It should be noted however that in justifying reasons for the delay applicant has to account for each and every day of delay as it was held in the case of **Alman Investment Ltd Vs. Printpack Tanzania and Others**; Civil Application No. 3 of 2003 (Unreported)

*"Applicant ought to explain the delay of every day that passed beyond the prescribed period of limitation."*

I have keenly gone through the chamber summons, affidavit and reply to counter affidavit by the applicant, the respondent's counter affidavit, the ruling sought to impugned as well as the rival arguments in both parties' submissions. What is gleaned from the applicant's prayer in the chamber summons is that he is seeking extension of time to appeal against the ruling originating from taxation matter. Under Order 7(1) and (2) of the Advocates Remuneration Order of 2015, GN. No. 264 of 2015 any party aggrieved with the decision of the Taxing officer has to file a reference to the High Court within 21 days from the date of the decision and not the appeal as prayed by the applicant. To justify the position stated above I quote the provisions of Order 7(1) and (2) of the Advocates Remuneration Order, 2015, reading thus:

*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.*

In view of the above provision of the law I find that the applicant's prayer was wrongly made as it ought to be for extension of time within which to file a reference to this court and not appeal. I would have struck out the application for containing a wrong prayer particularly in this application which is prepared by the advocate but for the interest of justice and by invoking the oxygen principle which aims at seeing cases are decided on merits, I substitute the prayer to be that of extension of time within which to file a reference to this court and proceed to determine the application on merits.

As alluded to above the ruling sought to be assailed by the applicant was delivered on 03/11/2020, therefore the 21 days within which the applicant was supposed to file the reference lapsed on 24/11/2020. This application was filed on 08/01/2021, 64 days passed in which the applicant is to account for. The reason advanced by the applicant is that in September, 2020 he was forced to travel to Rorya, Mara Region to attend his mother who was seriously sick undergoing traditional medication in the home village of Mika, who ultimately passed away on 31/11/2020 and buried on 06/12/2020. That on coming back to Dar es salaam he found his matter already decided on 03/11/2020, in the favour of the respondent. Being aggrieved and having been time barred could not timely file a reference to this court hence the present application. A copy of the burial permit was attached to justify the

alleged death. Supporting the reason with the case of **Selina Chibango Vs. Finihas Chibango**, Civil Application No. 182 'A' of 2007 (CAT-unreported) without attaching its copy, it was Mr. Marco's submission that, the reason supplied is sufficient enough to justify the delay in filing the said reference to this court. He thus prayed the Court to allow the application. In riposte Ms. Mohamed argued that, the applicant failed to account for each and every day of delay as it is the requirement of the law to so do as rightly stated in the cases of **Sebastian Ndaula Vs. Grace Rwamafe**, Civil Application No. 04 of 2014(unreported), **Losero Vs. Mwarau**, Civil Application No. 10 of 2015 (unreported) and **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2017 (unreported), the copies of which were not supplied for court's reference and consideration. She therefore prayed the court to dismiss the applicant.

It is true the applicant has failed to account for the delay of 64 days as submitted by Ms. Mohamed for the respondent. The applicant who claims to have travelled to Rorya to nurse his sick mother who was undergoing traditional treatment at home failed to justify his travel to Rorya as not tickets be it of bus or air transport were attached to his affidavit to that effect. That aside even his claim that his mother was undergoing traditional treatment at her home village of Mika before she passed away on 31/11/2020 and buried on 06/12/2020 is contradicted by the attached burial permit to the reply to counter affidavit that shows the death occurred at Utegi Health centre. Assuming he travelled which fact is not proved and the death of his mother so occurred and buried on 06/12/2020 the court is not told as to when the applicant came back to Dar es salaam from Rorya before he started making a follow up his case and when was he issued with a copy of the ruling so as

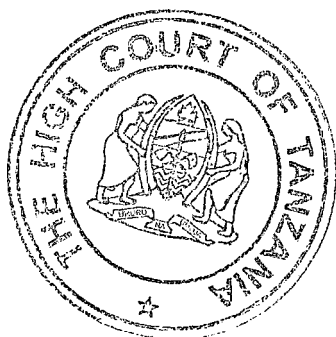
to justify the delay of 32 days from 06/12/2020 when the burial ceremony of his mother took place until when this application was filed on 08/01/2021.

As the applicant has failed to account for the inordinate delay of 64 days within which to file reference to this court and since there is no any other sufficient reason raised and proved, I find the application seriously suffers from deficiency of merits. The same is hereby dismissed.

Considering the nature of the application and the fact that the application arises from application for bill of costs against the applicant himself, I order each party to bear its costs in this application.

It is so ordered.

DATED at DAR ES SALAAM this 06<sup>th</sup> day of August, 2021.



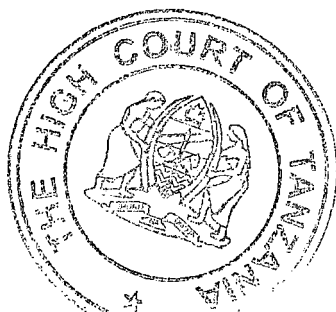
  
E. E. Kakolaki

**JUDGE**

06/08/2021

Delivered at Dar es Salaam in chambers this 06<sup>th</sup> day of August, 2021 in the presence of the applicant and Ms. Asha Livanga, court clerk and in the absence of the Respondent.

Right of appeal explained.



  
E. E. Kakolaki

**JUDGE**

06/08/2021