

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

**MISCELLANEOUS CIVIL APPLICATION NO. 28 OF 2020**

*(Arising from Bill of Costs No. 01 of 2020 of Hai District Court at Hai, Taxing Master and originating from Civil Case No. 07 of 2018 in the District Court of Hai at Hai)*

**JAABIL SWALEHE KOOSA .....1<sup>ST</sup> APPLICANT**  
**YAHAYA MWASHA .....2<sup>ND</sup> APPLICANT**  
**KADRI AROUN KIMARO ..... 3<sup>RD</sup> APPLICANT**  
**HAJI ABOU KIMARO ..... 4<sup>TH</sup> APPLICANT**  
**TWAHA SADALAH URASSA ..... 5<sup>TH</sup> APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF**  
**THE ISLAMIC SOLIDARITY CENTRE ..... RESPONDENT**

**RULING**

**MUTUNGI .J.**

The applicants pray for extension of time to lodge reference out of time against the Ruling and Order delivered by J.G. Mawole (Taxing Master) on 10<sup>th</sup> July, 2020 in Bill of Cost No. 1 of 2020. The application is made under **Order 8 (1) and 8 (2) of the Advocated Remuneration Order, 2015, G.N. No. 264 of 2015** (the Order) and is supported by a Corresponding

Affidavit deponed by Mr. Engelberth Boniphace, the applicants' advocate. The respondent in response filed a counter affidavit thereto. By consent of the parties, the court ordered the application be heard by way of written submissions. The applicants were jointly represented by Mr. Engelberth Boniphace while the respondent enjoyed the services of Mr. Edwin Silayo, learned advocate.

In support thereof Mr. Boniphace submitted, after the decision of the taxing master was delivered, the applicants filed an application for revision on 29<sup>th</sup> July, 2020 vide the electronic filing system. However, the Deputy Registrar rejected the same on the ground that, the same ought to have been filled as a Civil Reference instead of Civil Revision. The learned advocate expounded, the original Civil Case No. 07 of 2018 ended on a sustained preliminary objection after the applicants herein (defendants by then) challenged the Court's pecuniary jurisdiction to entertain the suit. In dismissing the suit, the trial magistrate ordered "*costs to follow events.*" It was their desire to file a revision to get an interpretation of the meaning of the clause "*costs to follow event*".

The same occurred when the applicants filed a Bill of Cost No. 01/2020 praying for the costs of the dismissed suit at a tune of Tshs. 2,030,000/=, the respondent's advocate raised a preliminary objection that the filed Bill of Cost was nugatory as there was no order for costs. However, the taxing master sustained the objection and dismissed the application with costs on the ground that an order "costs to follow the event" is not a grant of cost.

In the circumstances, the applicants' grievance was on the Court's interpretation of the clause "costs to follow the event" hence they filed a Civil Revision which was rejected on the ground they were to file a reference instead. They had to comply with the Deputy Registrar's directives, but by then the time limitation to file a reference had already lapsed. This is the reason they are now before this court. Mr. Boniphace was of the view thereof, they have a reasonable cause for the delay as the same was out of the applicants' control. They were executing the court's instruction to change the mode of application.

The applicants' advocate explained further, there is a laid down criteria of what a good cause is. The same is found the

in the authorities of **Henry Leornad Maeda and Another V MS John Anaeli Mongi and Another, Civil Application No. 31 of 2013 (unreported)** and **Henry Mugaya Vs Tanzania Telecommunication Company LTD, Civil Application No. 8 of 2011**. On the same footing the applicants' good cause of delay was the Deputy Registrar's refusal to admit the revision application despite their advocate making efforts to file on time.

Be as it may, the respondent will not be prejudiced in any way since the Ruling in Civil Case No. 7 of 2018 is still valid. Further the respondent is are still on the safe side since this court has since confirmed the said ruling (from the District Court).

To cap it, the applicants' counsel was of a settled mind, the intended reference carries with it great chances of success. There was an obvious illegality in the trial Magistrates interpretation of the words "costs to follow events" on the face of it. He finally prayed this Court exercises its discretionary powers and proceeds to grant the application. Contesting the application, Mr. Silayo argued, there is a Bill of Cost No. 4 of 2020 before the same court between the same

parties which has its origin from Bill of Costs No. 1 of 2020. The said Bill of Costs (No. 4 of 2020) was granted to a tune of Tshs. 2,030,000/=. It is surprising that the applicants' advocate did not bother to stay the hearing of the Bill of Costs in No. 4/2020 pending the hearing of this application. He proceeded appearing before the two bill of costs and even went at length to concede to some of the costs prayed for. The learned counsel argued, since the applicants were granted costs, this application is hence overtaken by events.

More so, the fact that the delay was caused by the applicants' filing a wrong application is a new fact not pleaded in their affidavit but in the submissions. The same is contrary to the dictates of the law. He cited the case of **The registered Trustees of the Archdiocese of Dar es Salaam V The Chairman Bunju Village Government and 4 Others, CAT at Dsm** where the Apex Court was of the view, reason for failure to appeal on time must be given in an Affidavit not on submission because submissions are not evidence.

The above notwithstanding the counsel argued, although the applicants allege that their cause for delay was the denied application of revision, still they neither accounted for

the days of delay as was held in the case of **Elfazi Nyatega & 3 Others V Caspian Mining LTD, Civil Application No. 44/08 of 2017 (unreported)**.

It was Mr. Silayo's further submission, since granting of the extension of time is within the discretion of the court as was held in the case of **Mumello V Bank of Tanzania (2006), E.A. at page 227**, the applicants were to advance sufficient grounds. In this application no sufficient grounds have been established by the applicants to warrant the court to exercise its discretion to extend time. In that regard the delay was caused by their own negligence hence, this court should dismiss the application with costs.

Rejoining briefly, Mr. Boniface reiterated his earlier submission and maintained, the delay was not caused by applicants' negligence but by a technical error. The same has been conceded to by the respondent's counsel. He added, in Bill of Cost No. 4 of 2020, the respondent's counsel was the advocate in conduct of the Bill representing the respondents who were the decree holders. He was therefore in the same position to urge the court to stay the hearing as there was a

pending application in this court. He still insisted that the application be granted.

Having considered arguments for and against the application, the issue is whether the applicants have demonstrated sufficient cause for the delay in filing the intended reference before this court. It is a settled principle of law, an application for extension of time is entirely in the discretion of the court to grant, or refuse. For such application to be granted or be considered by the court, the applicant has to show good cause. The discretion is judicial and not according to private opinion or arbitral. The case of **Eliakim Swai And Another V. Thobias Karawa Shoo, Civil application No. 2 of 2016 (CAT) at Arusha (unreported)** did set down the tests in determining good cause for granting extension of time, among others, the applicant must account for all the period of the delay and such delay should not be inordinate. Further, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he/she intends to take.

In light of the above, the applicants' delay which the respondent does not dispute is the fact that the applicants

filed their Civil Revision with this court timely but the same was not admitted on the ground, they were supposed to file a Civil Reference instead. In the circumstances, the applicants were not negligent in pursuing their rights as they filed their Civil Revision on 29<sup>th</sup> July, 2020 immediately after the ruling was delivered on 10<sup>th</sup> July, 2020. This was obviously a gesture of promptness on their part. In the case of **Philemon Mang'ehe t/a Bukine Traders V Gesbo Hebron Bajuta, Civil Application No. 8 of 2016, CAT at Arusha (unreported)**, the Court of Appeal observed.

*"Taking into consideration the circumstances surrounding this case and the fact that applicant had not been sitting idle, I am of the considered view that good cause has been established. In a result, extension of time is hereby granted to the applicant to file his application for Reference."*

Also, in the case of **Cropper V Smith (1884) 26 HD 700** it was held interalia that: -

*"It is well established principle that the object of the court is to decide the rights of the parties and not to punish them for mistakes they made in the*



conduct of their rights. I know of one kind of error or mistake which if not fraudulent or intended to overreach, the court ought to correct if it can be done without injustice to the other part. **The court does not exist for the sake of disciplines but for the sake of deciding matters in controversy.**" (Emphasis mine).

The same position was highlighted in the case of **General Market Co. Ltd Vs A. A. Shariff [1980] TLR 61**, where it was emphasized that rules of procedures should not be used to defeat justice.

Merging the history of this matter which speaks for itself and the authorities above, I am convinced that the applicants have presented before this Court sufficient reasons to warrant extension of time. More so, the applicants' affidavit, in paragraph 10 states as hereunder: -

*"That the delay was not for the applicants' fault as the applicants did file a reference on time but the admission was not made on time instead remarks were made after expiry of the required reference time..."*

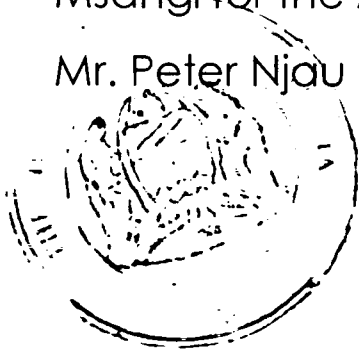
This Court cannot punish the applicants for the mistakes which the respondent referred as "negligence" which as observed resulted in the cause of fighting for their rights.


For the reasons stated, I am of the conclusion, the application is meritorious and deserves grant of extension of time as prayed. The applicants are hereby granted 14 days to file their intended Reference with no order as to costs.

It is so ordered.

  
**B. R. MUTUNGI**  
**JUDGE**  
**23/09/2021**

Ruling read this day of 23/9/2021 in presence of Miss Amina Msangi for the Applicants and Amina Msangi holding brief for Mr. Peter Njau for the Respondent.



  
**B. R. MUTUNGI**  
**JUDGE**  
**23/9/2021**

RIGHT OF APPEAL EXPLAINED.