IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION No. 56 OF 2021

(Arising from Taxation Cause No. 45 of 2019 before the Deputy Registrar, Hon. F. H. Mahimbali, dated 26th February 2021)

DOCTORE MALESA.....1ST APPLICANT

NKANDA JOSEPH.....2ND APPLICANT

MARWA CHACHA.....3RD APPLICANT

MRS. MARY DISMAS.....4TH APPLICANT

VERSUS

REGISTERED TRUSTEES OF BAKWATA.....RESPONDENT

RULING

01st & 28th September 2021.

TIGANGA, J.

This is an application for extension of time to lodge application for reference to this court against the decision of the taxing master, delivered on 26th February, 2021. The application has been made under Order 8 of the Advocates Remuneration Orders, 2015, sections 68(e) and 65 of the Civil Procedure Code [Cap 33 R.E 2019]. The same is made through a chamber summons containing the orders sought namely;

1. That this honourable Court be pleased to grant an order for extension of time within which the applicant will lodge the

reference against the decision of the taxing officer Hon. F.H. Mahimbali, Deputy Registrar dated on 26th February 2021,

2. Costs of this application be provided for,
3. Any other order/orders that the Hon. Court may deem fit to grant or be pleased to issue.

It has been supported by the joint affidavit deponed by the applicants herein containing the facts leading up to this application and the reason for the same. On the date set for hearing, the applicants stood unrepresented whereas the respondent was represented by the learned counsel Mr. Mwanaupanga.

The arguments for and against this application were made orally whereby arguing in support of the application, the 1st applicant stated that, they had no knowledge of the existence of Bill of Costs No. 45 of 2019 as alleged as they were served with the Bill of Costs No. 37 of 2019. He further claimed that following that lack of notice, the applicants did not attend at the hearing of the said Bill of Cost No. 45 of 2019; therefore they were not given the right to be heard. He prayed that, they be given a chance to file their reference as they were not supplied with the decision of the bill of costs in time.

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The 2nd applicant submitted that they had no Bill of Cost No. 45 of 2019 but theirs was Bill of Cost No. 37 of 2019. However, they were called and ordered to be heard on that date but to their knowledge was in Bill of Cost No. 37 of 2019 not 45 of 2019. It was his prayers that they be given an opportunity so that hey can file a reference out of time as they were condemned unheard and the said decision was given in their absence.

The 3rd applicant's submission was to the effect that, the case that was supposed to be heard was Bill of Cost No. 37 of 2019 not Bill of Costs No. 45 of 2019. According to him, the same was ordered to be argued in writings where they were to file their written submissions. He further submitted that, on 26th February 2021 the ruling was delivered and they asked for a copy of the same which was supplied to them on 15th March 2021. Having been served with the copy of the ruling, on 29th March 2021, they filed an application for reference which was rejected as the same was supposed to be filed online. According to him, it wasn't received until 19th May 2021 when they were able to file this application as they were already out of time. He prayed to be given an opportunity to be heard as they were not parties to Bill of Cost No. 45 of 2019 and it was important to first get the copy of the ruling for them to file taxation reference.

In rebuttal of the submission made in support of the application, the learned counsel for the respondent argued that, the applicants were given an opportunity to be heard. According to him, they were served with summons for Bill of Costs No. 37 of 2019 and later they received summons for Bill of Costs No. 45 of 2019 the facts which is evidenced by the applicant's joint affidavit which was filed in support of this application in which they stated that, they received summons for Bill of Costs No. 45 of 2019 after it was changed from Bill of Costs No. 37 of 2019 and that they were informed of those changes in front of the Deputy Registrar.

On the complaint that the applicants were not given the chance to be heard, counsel submitted that, although the said complaint was not included in the supporting affidavit, he however countered it by insisting that, they were given that chance as reflected on page 2 of the impugned ruling.

The learned counsel held a strong view that, as per the provisions of Order 7 of the Advocates Remuneration Order (supra), it is not a mandatory requirement that the copy of the impugned decision be attached thus the applicants' ground that they could not lodge their application within time because they were not supplied with the copy of

the decision lacks base. He prayed for the application to be rejected on the strength of the submission he made.

In their rejoinder, the applicants reiterated what they had submitted earlier in their submission in chief that, they were not served with the Bill of Costs No. 45 of 2019, they were not heard and neither were they given the ruling date. They prayed to be allowed to file their application for reference.

Having summarised the submissions by the parties and gone through the affidavit filed in support of the application, while having in mind that this is an application for extension of time, the main question that pops up is whether or not the applicants have shown sufficient cause to enable this court to grant the application as prayed.

It is apparent that under the enabling provision, that is Order 8 of the Advocates Remuneration Order (supra), this court has been conferred with discretion to extend time to an applicant to lodge an application for reference, but for such extension to be granted, it has to be shown that, there is sufficient or good cause for delay.

As to what amounts to sufficient or good cause, no any hard and fast rules have been given by the statute or case law. The same depends on the reasons advanced by the applicant to account for the

delay and move the court to grant the extension depending on the circumstances of each case. See **Osward Masatu Mwizarubi vs Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (CAT-unreported). However, at least, in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported), CAT, the following guidelines were formulated in considering of what amounts to good cause:-

> *(a) The applicant must account for all days of the delay.*
>
> *(b) The delay should not be inordinate.*
>
> *(c) The applicant must show diligence, and not apathy, negligence or sloppiness in prosecuting the action that he intends to take.*
>
> *(d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

Moreover, from the above authority it can be said that, whenever the issue of illegality of the decision sought to be challenged arises, it in itself can be considered as sufficient cause and thus the court is required to overlook compliance of the requirement to account for the delayed days and enlarge the time. Read **The Principal Secretary, Ministry**

of Defence and National Service vs Devram P. Valambhia (1992) TLR 387.

Now, having subjected the above referred principles to the application at hand, I can hastily state that I am in total agreement with the submission by the learned counsel for the respondent that the applicants have not been able to show sufficient cause to move this court to extend the time for filing an application for reference. I say so because the applicants have not been able to meet the requirements as stated in the above-mentioned principles which are accounting for each day of delay and showing that there is illegality in the impugned decision.

On the first principle of accounting for each day of delay, the applicants were, as provided under Order 7(2) of the Advocates Remuneration Order, required to lodge their reference within 21 days from the date the impugned decision was made. Since the decision was delivered on 26th February 2021, they were to lodge reference not later than 19th March 2021. The applicants have stated that they could not file refence within time as they had not been supplied with the copy of the impugned decision until on 15th March 2021. Looking at the dates, they

still had four days to lodge the application but it looks like they were reluctant to use that opportunity.

The applicants in their joint affidavit and in their submissions have not accounted for each day of delay from 19th March 2021 when the delay started counting up to 29th March 2021 the date they filed their application which was rejected on the ground that it was supposed to be filed online. Again, the period from 29th March 2021 to 7th May 2021 when they filed this application for extension of time has also not been accounted for.

It is settled law that an applicant in an application for extension of time is required to account for each day delayed as stated in the case of **Bushfire Hassan vs Latina Lucia Masanya**, Civil Application No.3 of 2007(unreported) where it was 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."*

As regards to the second issue of illegality, in the sense that the right to be heard was not accorded to the applicants, the same, as argued by the learned counsel for the respondent, has not been contained in the affidavit filed in support of the application. I am aware

that whenever there is illegality or irregularity in the impugned decision, the alleged illegality ought to be made clear in the affidavit in support of the application. Since the said illegality was not reflected in the affidavit of the applicants and it was only raised in the submissions before this court, this court as a matter of law, it is not bound to consider the same for it is regarded as an afterthought. Having discussed as above, this court finds that this application lacks merits as the applicants have failed to adduce any sufficient reason for this court to grant their application. It is dismissed with costs.

It is accordingly ordered.

DATED at **MWANZA** this 28th day of September, 2021

J. C. Tiganga

Judge

28/09/2021

Ruling delivered in open chambers in the presence of Mr. Marwa Chacha, for the applicants and Mr. Emmanuel John holding brief for Mwanaupanga, for the respondent vides audio teleconference.

THE HIGH COURT OF TANZANIA MWANZA

J. C. TIGANGA

JUDGE

28/09/2021

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