

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISC. LAND APPLICATION NO. 57 OF 2021**

*(Arising from Taxation Cause & of 2020 delivered by the taxing officer Hon.  
P. H. Mahimbali, DR on 26/2/2021)*

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**1.DOCTORE MALESA**

**2.NKANDA JOSEPH**

**3.MARWA CHACHA**

**4.MRS. MARY DISMAS**

..... **APPLICANTS**

**VERSUS**

**1.MWANZA CITY COUNCIL**

**2.REGISTERED TRUSTEE OF BAKWATA**

..... **RESPONDENTS**

**RULING**

*09/09/2021 & 06/10/2019*

**W. R. MASHAURI, J;**

This is an application for an extension of time within which the applicant will lodge the reference against the decision of the Taxing Master Hon. F. H. Mahimbali delivered on 26<sup>th</sup> Februari, 2021.

The application has been made under order 8 of the Advocates Remuneration order, 2015 section 68(e) and section 95 of the CPC Cap. 33.

The reliefs sought in the chamber summons are that: -

1. This 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 Master Hon. F. H. Mahimbali delivered on 26<sup>th</sup> February, 2021.
2. Costs to follow the event.
3. Any other order/orders this court may deem just and fit to grant.

The applicants Doctore Malesa, Nkanda Joseph, Marwa Chacha and Mrs. Mary Dismas appeared in person.

The respondent's Mwanza city council and Registered Trustees Bakwata enjoy the services of Mr. Mwanaupanga learned counsel.

When the matter was called in court on 09/09/2021 only two applicants namely Marwa Chacha and Nkanda Malesa entered appear and, the remaining two applicants Doctore Malesa and Mrs. Mary Dismas defaulted appearance.

Speaking on behalf of the two applicants who did not enter appearance, Marwa Chacha and Nkanda Joseph the 1<sup>st</sup> and 3<sup>rd</sup> applicants respectively and

jointly told the court were ready for hearing of the application in absence of their counter-parts. Nkanda Joseph and Marwa Chacha, being the first to address the court, in support of the application Mr. Marwa Chacha whose arguments were accepted by the 2<sup>nd</sup> applicant Nkanda Joseph said that, their delay to lodge their reference in the High court against the decision of the Taxing Master Hon. F. N. Mahimbali then Deputy Registrar was not that of their own making.

That, on 25/02/2020, there were two applications for bill of costs filed before the Taxing Master to wit: - Bill of costs No. 8 of 2020 and No. 45 of 2019. The application for Bill of costs No. 8 of 2020 was heard and disposed of on 25/02/2021. During the time of hearing the 2<sup>nd</sup> Application No. 45 of 2019 there was a technical problem arose which vitiated the Taxing Master to proceed hearing it. The hearing of the same was adjourned. The applicants were provided with copy of the ruling in Application No. 8 of 2020 but they did not appeal against the Taxing Master's ruling in that application because they had in mind that the two applications should be disposed of in consolidation as the 2<sup>nd</sup> Application No. 45 of 2019 was adjourned for hearing on 26/2/2021. They did not file their reference against the decision in Application No. 8 of 2020 on 25/02/2021 because time had went down kill.

When they went to the court on 26/02/2021 purporting to lodge their reference against the ruling of the Taxing Master in application No. 45 of 2015 they found the Taxing Master not in their office nor were they told the date on which to lodge their application. They were told the Taxing Master and his clerk had travelled for Geita on duty and their application against the decision of the Taxing Master in Bill of costs No. 5 of 2015 was its admission refused without being told of the cause. They made a consultation to an advocate who was roving outside the court premises who told them that, their intended appeal was out of time. He advised them to lodge it in court electronically and they did, but yet the same was out of time. Hence this application for leave to appeal out of time.

In reply, Mr. Mwanaupanga counsel for the respondents submitted that, the submissions by the applicants respectively are mere submissions from the bar. At law they are not evidence. They are not contained in their affidavit. They ought to be discarded by the court.

To back up his submission, he referred the court to the case of **Dioces of Dar es Salaam V. Chairman of Bunju Village and 11 Others** Civil Appeal No. 107 of 2009 (CAT) DSM Registry (unreported) in which the CAT held that: -

*"...We believe however that; submissions are not evidence."*

That under paragraph 5 and 6 of their affidavit, the applicants have said that, they were given the copy of ruling late which is contrary to the Advocates Remuneration order of 2015 order of (1) to (4) which provides directives on how to do when an applications registration is refused.

That, there is nowhere in the order where an attachment of the ruling in filing reference to a judge is mentioned. Therefore, the applicant's purported reason for delay that they were not served with a copy of ruling in time so as to file their reference lacks reasonable cause. He therefore prayed this court to dismiss the application for want of reasonable cause.

In rejoinder, Mr. Marwa Chacha 3<sup>rd</sup> applicant submitted that, they could not be able to argue well in rejoinder because they were not supplied with the judgment of the Court of Appeal cited by learned counsel for the respondent before hearing of this application had commenced. He prayed the court to allow the application as the availability and attachment of a ruling of a court in application is not indispensable.

The issue is whether the reason for delay to file reference to the judge given by the applicant is reasonable.

On their part, the applicants allege were not filed their reference to the judge because they were not supplied with the ruling of the Taxing Master so as to be able to prepare their application compliance to the provisions of Order 7(1) and (2) of the Advocates Remuneration GN. No. 264 published on 17<sup>th</sup> July, 2015 as there were not given copy of the ruling of the Taxing Master in time.

On my part, I am inclined to the submission by counsel for the respondents that, there is no rule in the Advocates Remuneration order GN. No. 264 published on 17<sup>th</sup> July, 2015 which require a party aggrieved by ruling of the Taxing Master to attach a ruling in an application for reference to the judge.

In their submission in support of the application the applicant said that, on 25/02/2021 there were two applications for bill of costs against the decision of the Taxing Master namely: - Bill of costs No. 8 of 2020 and No. 45 of 2019. The former was disposed of on 25/02/2021. That, when the hearing of Bill of costs No. 45 of 209 was set in motion, there arose a technical problem which vitiated the Taxing Master to proceed hearing it the result of which it was adjourned. The applicants were however provided with the ruling in Bill of costs No. 8 of 2020. They did not however appeal against

the decision in application No. 8 of 2020 on 25/02/2021 because at the time were given the ruling, time had went down kill. When they went to the court on 26/02/2021 purporting to lodge their reference against the ruling of the Taxing Master in Application No. 45 of 2015 they found the Taxing Master and his clerk not present in their respective offences nor were they told the date on which to lodge their reference. They were told the Taxing Master and his clerk had availed to Geita on duty.

That, their application for reference against the ruling of the Taxing Master in Bill of Costs No. 5 of 2015 was its registration refused without being told of the cause. They made a consultation to an advocate who was roving outside the courts premises waiting for a call of his client's' case who told them that their intended reference was not admitted for being time barred. The learned advocate advised then to lodge it electronically. They did, but yet the same was out of time.

Notwithstanding of the provisions of section 7 (1) and (2) of the Advocates Remuneration order GN. 264 published on 17<sup>th</sup> July, 2015 I am of the view that, the applicants' delay to lodge their reference to the judge was not that of their own making. It is a cardinal principal at law that each case can be judged according to its own circumstances. It is not a rule of law to



attach a ruling of the Taxing Master to the application for reference but, it is currently an established and accepted as part of the procedure in the proper administration of justice that an attachment of rulings and judgments in applications and appeals in this country. The rule is designed to ensure that the applicant and/or appellant has a fair hearing. Given the above stated, this application for leave to file reference to the judge out of time is granted. No order as to costs is made.



  
**W. R. MASHAURI**

**JUDGE**

**06/10/2021**



Date: 06/10/2021

Coram: Ho. W. R. Mashauri, J

Applicant: Present

Respondent: Present

B/c: Elizabeth

**Court:** Ruling delivered in court in presence of all parties this 06/10/2021  
Right of appeal explained.



  
**W. R. MASHAURI**

**JUDGE**

**06/10/2021**