

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

MISC. CIVIL APPLICATION NO. 36 OF 2020

(Originating from civil reference No. 06 of 2018; Taxation Cause No. 16 of 2016 in Civil Application No. 29B of 2014 and Karagwe District Court in Civil Case No. 03 of 2003)

ALLI CHAMANI.....APPLICANT
VERSUS
BAPTIST CHURCH OF KARAGWE.....RESPONDENT

JUDGMENT

2nd November & 5th November 2021

Kilekamajenga, J.

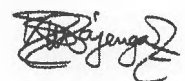
After a battle of litigation for almost 18 years, the case finally came to an end. As a result, the respondent filed a bill of costs of Tshs. 10,489,600/=. On 23rd October 2018, the taxing master delivered the ruling which reduced the bill of costs to Tshs. 3,976,000/=. On 06th November 2020, the applicant filed the instant application seeking extension of time to challenge the award of 3,976,000/=. When the application was due for hearing, the applicant appeared in person and without representation whereas the respondent was represented by the learned advocate, Mr. Dionisi Karwani. The parties prayed for the disposal of the application by way of written submissions and the prayer was accordingly granted.

In the written submission, the applicant alleged the existence of illegalities in the ruling of the taxing master. The applicant further alleged that the respondent is



an unincorporated organisation. He also raised some issues which are not worthy to be stated in the instant application. In response, the counsel for the respondent vehemently argued that the case was properly adjudicated and that, the claim of illegality raised by the applicant does not affect the bill of costs awarded by the court. The counsel further argued that the applicant failed to account for the delay of seven months. He also raised several issues which are irrelevant in the instant application. After the parties' submission, there was no rejoinder submission and the application was immediately scheduled for ruling.

After considering the applicant's affidavit, the respondent's counter affidavit and oral submissions made by the parties, it is apposite at this point to consider the merits in this application. The instant application seeks an extension of time to allow the applicant to challenge the award of bill of costs. For the court to grant extension of time there are established principles of law to guide the court. It is an established principle of law that the Court may grant extension of time where the applicant has advanced **sufficient cause** or **good reasons** for the delay. See, the cases of **Tanga Cement Co. v. Jummanne Masangwa and Another** Civil Application No. 6 of 2001 (unreported); **Sospter Lulenga v. Republic, Criminal Appeal No. 107 of 2006**, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. Republic, Criminal Appeal No. 130 of 2003**, Court of Appeal of Tanzania at Mbeya (unreported) and **Shanti v. Hindochi and Others [1973] EA 207**.



Furthermore, extension of time is the discretion exercised by the court which however must be exercised judiciously. For instance, in the case of **Tanga Cement Co. v. Jumanne Masangwa and Another, Civil Appeal No. 6 of 2001** (unreported), the Court of Appeal of Tanzania stated that:

*This unfettered discretion of the court, however, has to be exercised judicially, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly: the absence of any valid explanation for the delay: lack of **diligence** on the part of the applicant.'*

Through case law, there are several factors considered by the court as sufficient cause for extension of time, such as:

1. *The applicant must account for all period of delay.*
2. ***The delay should be inordinate.***
3. ***The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.***
4. ***If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality on the decision sought to be challenged*** (emphasis added).

See, the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil



Application No. 2 of 2010 (unreported), which is quoted with approval in the case of **Bishop Roman Catholic v. Casmir Richard Shemkai, Civil Application No. 507/12 of 2017**, CAT at Tanga (unreported).

The same principles of law are reiterated in the case of **Zawadi Msemakweli v. NMB PLC, Civil Application No. 221/18/2018**, CAT at Dar es salaam (unreported) thus:

*'Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion...the Court must consider factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether applicant was diligent, **whether there is point of law of sufficient importance** (emphasis added) such as the illegality of the decision sought to be challenged and overall importance of complying with prescribed timelines.'*

In the instant application, the applicant is intending to challenge the decision of the taxing master which was delivered on 23rd October 2018. However, the instant application was lodged on 6th November 2020. The simple calculation shows that, the applicant delayed for almost two years which have not been accounted for. In this application, the applicant alleged illegalities that the respondent is an unincorporated organisation. I find this argument misplaced because it was not supposed to be argued at this stage; the same argument ought to be addressed during the trial of the main case. He also alleged

illegalities in the application for costs which, in my view, does not make sense. I am convinced to believe that, the instant application was the fruit of an afterthought or rather an abuse of court processes. I hereby dismiss the application with costs. The respondent should proceed with execution of the bill of costs. It is so ordered.

DATED at BUKOBA this 5th day of November, 2021.



Court:


Ntemi N. Kilekamajenga.
JUDGE
05/11/2021

Ruling delivered this 05th November 2021 in the presence of Dionisi Kirwani for the respondent and in the absence of the applicant. Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
05/11/2021

