

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CIVIL APPLICATION NO. 3 OF 2021

(Originating from Bill of Cost No.4 of 2020 from the District Land and

Housing Tribunal for Lindi at Lindi)

AWADH ABOOD SALEHE.....APPLICANT

VERSUS

SALUM ALLY MUSSA.....1ST RESPONDENT

SAID HAMISI BOPU.....2ND RESPONDENT

RULING

2nd Nov. & 7th Dec., 2021

DYANSOBERA, J.

This is an application for enlargement of time within which to lodge an application for reference against the ruling and drawn order issued by the District Land and Housing Tribunal for Lindi in Bill of Costs No.4 of 2020. The application is by Chamber Summons which was taken under the provisions of Order 8 (1) and (2) of the Advocates Remuneration Order, 2015 G.N. No.267 of 2015. The same is supported by an affidavit duly affirmed by the applicant. The application has,

however, been resisted through the affidavit in reply filed by the respondents.

For a better appreciation of the issues of contention, it is necessary to explore the factual setting giving rise to the application which may briefly be recapitulated as follows:-

In the District Land and Housing Tribunal for Lindi at Lindi the respondents filed a bill of costs No.4 of 2020 whereby the first respondent claimed Tshs.1,924,000/= and the second respondent claimed Tshs.3,352,000/= after being declared the winners in Land Application No.5 of 2016 before the same Tribunal. After a full trial, on 3.12.2020 delivered its ruling. The Tribunal was satisfied with the Bill of Cost claimed by the respondents and thus it taxed the bill of costs at Tshs.1, 364,000/= for the first respondent and Tshs. 2,792,000/= for the second respondent, the grand total for both respondents being Tshs.4, 156,000/=. It would seem the applicant was not satisfied with the taxed bill of costs. He, however, found himself out of the prescribed time within which to lodge his application for reference of the Bill of Cost No.4 of 2020, hence this application for extension of time.

During the hearing of this application, the applicant and the respondents appeared in person and unrepresented.

The applicant submitted that he made this application of extension of time in order to enable him to file his reference against the Bill of Costs by the District Land and Housing Tribunal which is supported by his own affidavit.

In response, the first respondent told this court that he had filed his counter affidavit dated on 24th day of May, 2021 and had nothing to add to the contents of his counter affidavit. The second respondent prayed his counter affidavit dated on 24th day of September, 2021 to be adopted as part of his submission and had nothing to add.

I have dispassionately considered and weighed the rival arguments from both parties. To start with, I think it is imperative to reiterate as a matter of general principle that whether to grant or refuse an application of extension of time is entirely in the discretion of this court. But, I am aware that discretion is judicial and must be exercised judiciously and according to the rules of fair trial and administration of justice.

For this court to be able to exercise its discretionary powers in granting an extension time to an applicant who wishes to pursue either of the appeal, revision, review or reference out of the prescribed time, the Court has set criteria which have to be considered when dealing with the matter of such nature. For instance, the defunct Court of Appeal for Eastern Africa in the case of **Mbogo v. Shah** [1968] EA held that: -

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

Besides, the recent decision of the Court of Appeal of Tanzania took the same view as stated in the referred above case which is reflected in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010. In that case, the Court reiterated the following guidelines for the grant of extension of time: -

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

Now, being aware with the guidelines for granting or not an extension of time, my duty is to weigh the grounds advanced in the applicant's affirmed his affidavit vis a vis the guidelines established by the Court. The main reason advanced by the applicant is centred in his long sickness which endured from 7.10.2020 when he was in Dar es Salaam as his place of residence. This reason is featured on paragraph 5 of his affidavit. But before he went to Dar es Salaam, the applicant lodged his letter to the Tribunal whereby he requested the copies of the ruling of the Bill of Costs No.4 of 2020 which was received by the Tribunal as is evidenced by the Tribunal Stamp Seal and was dated on 03/12/2020 as the date of reception. According to the contents of paragraph 5 of the affidavit, the applicant was taken to Mico Best Dispensary for health check-up and treatment or medication. Furthermore, the applicant affirmed that on 7.12.2020 he was admitted at the same Dispensary to 25.12.2020 when was discharged with an exemption from duties for a month so that he could obtain a quick recovery and had to attend at the dispensary after every six days for a progressive check-ups. These facts are featured under paragraph 6 and 7 of the affidavit. It is the applicant's argument that after the excused duty time had expired, he , on 8/2/2021 the applicant travelled to Lindi and made follow up at the Tribunal for the copies of the ruling he

requested on 3/12/2020. Luckily enough, the applicant was given the certified copies of the ruling and drawn order he requested on 3/12/2020. After being availed with said documents the applicant noticed that the same was tainted with illegalities since the Taxing Master failed to comply with the taxing principles and law as a result she made an erroneous decision which he prefer an application for reference to this court.

Besides, I am aware that the respondent strongly denied what the applicant affirmed. In fact, their counter affidavits are identical twins in terms of contents. As I have intimated earlier that, the respondents strictly denied what the applicant had affirmed by averring that the applicant was not diligent enough in collecting the typed copy of the ruling so that he could be within time to file his reference to this court. Thus, the respondents were of the view that the delay was accounted by applicant's sloth and not the Tribunal's administration. They added that the applicant wants to prolong the pendency of this matter in this court for his own ulterior motives.

Before going any further, let me determine whether this application is properly placed before this court. The applicant has moved this court under Order 8 (1) and (2) of the Advocates Remuneration Order, 2015 G.N. No. 267 of 2015. That being the case, I visited the said

provision of the law and I realised that the applicant has wrongly cited the law but which is in fact not fatal. He cited the Advocates Remuneration Order, 2015 G.N. No.267 of 2015. For clarity the proper citation of the law is as follows, the Advocates Remuneration Order, 2015 Government Notice No. 263 published on 17th July, 2015. The applicant erroneously cited this law on the Government Notice Number. Therefore, the proper Government Notice Number is 263 and not 267 as it appears in the Chamber Summons of the applicant. In view of that prevailing circumstance, I think it is important to invoke the application of the Principle of Overriding Objective or oxygen principle that this court will only deal with this matter justly by looking the substantive justice and not legal technicalities. Being aware of the proper citation of the law which has moved this court now let me look what it entails in order 8(1) and (2) of the Advocates Remuneration Order, 2015 Government Notice No. 263 published on 17/07/2015 as cited by the applicant. Order 8 (1) and (2) of the Advocates Remuneration Order provides: -

"8.-(1) The High Court may, subject to order 7 extend the time for filing a reference upon sufficient cause.

(2) An application for extension of time shall be made by way of chamber summons supported by an affidavit and be served to parties at least seven days before for hearing date."

As the above quoted order 8 (1) of the Order provides the extension of time which is subject to sufficient cause being shown by the applicant through the affidavit or submission. The phrase sufficient cause has not been defined by the law but the Court of Appeal has tried to elaborate what amounts to sufficient cause. For example, in the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No.6 of 2001(unreported) had this to say:-

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."

Having summarised the guidelines, the issue calling for determination is whether the applicant has sufficient cause for his delay to file his reference to this court. First, Order 7(2) of the Advocate Remuneration Order (supra) required the applicant to file his reference of Bill of Costs within twenty one (21) days from the date of the decision. However, the decision was delivered on 03/12/2020 and on the same day the applicant lodged his letter requesting to be supplied with the copies of the ruling and drawn order of the Tribunal in regard to Bill

of Costs No.4 of 2020. This fact is evidenced by annexure "A" which was received by the Tribunal on the same day of the ruling. But, the strange thing this court find is the lack of date when the copies of the ruling and drawn order were certified by the Tribunal. The deadline for the applicant to file his reference was on 24.12.2020. It is without dispute that the applicant has shown how he strived to make sure that he apply his reference within the prescribed time. But as stated under paragraph 3 of his affidavit he wrote his letter requesting the copies of the ruling and drawn order on the same date and handed over to the Tribunal for further administrative actions. But very unfortunately the applicant met his illness from 7.12.2020 when went to Bico Best Dispensary was admitted up to 25.12.2020 when was discharged. Also, it is unopposed argument that his doctor recommended to the applicant a month rest which was specifically designed to help him to have quick recovery and attend clinics at the dispensary after every six days for progressive check-ups. Therefore, form 25.12.2020 to 25.01.2021 is when the applicant completed a one-month rest as advised by his medical doctor from Bico Best Dispensary. The applicant has supported this fact by attaching several documents from Bico Best Dispensary from 7.12.2020 to 25.1.2021 when he made his last blood test. According to these records the applicant has been able to account his delay from

24.12.2020 to 25.1.2021. But what remains unaccounted for by the applicant is the delay from 26.1.2021 to 8.2.2021. As the contents of paragraph 7 and 8 reveal, it is quite clear that the applicant was conditionally discharged by exempting him from duties for a month. From simple arithmetic calculation I have found that a month given to the applicant to rest so as to have quick recovery and attend progress checks up ended on 25.1. 2021. The applicant has failed to explain what the applicant was doing from 26.1.2021 to 8.2.2021 when he travelled to Lindi and successfully obtained his requested certified copies of the ruling and drawn order. As it was stated by the Court of Appeal of Tanzania in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra) that the applicant ought to account for each day of delay and not some of the days delayed as the applicant did in this case. From 26.1.2021 to 8.2.2021 there are total of fourteen (14) days which the applicant has not accounted for. Therefore, failure by the applicant to account for these fourteen days makes this court to believe that the applicant has failed to establish sufficient cause for his delay.

Besides, the applicant, under paragraph 9 of his affidavit averred that the ruling of the Tribunal is tainted with illegalities since the Taxing Master failed to apply the taxation principles and or law. As far as this

ground is concerned, we are always reminded that the illegalities should be on the face of record and not to require a long drawn process to decipher from the impugned decision the alleged misdirection or non-directions on points of law. In the light of that observation, the applicant did not specifically point the illegality which featured in the ruling of the Tribunal which should be on the face of record. This is contrary to what the Court of Appeal stated in the case of **Lyamuya** (supra) where it made the following observations: -

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasised that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process. "

To that end, I must conclude that the applicant has not demonstrated any good cause that would entitle him extension of time.

In the result, this application fails and is, accordingly, dismissed with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W.P. Dyansobera

Judge

07.12.2021

This ruling is delivered at Mtwara under my hand and the seal of this Court on this 7th day of December, 2021 in the presence of the applicant and respondents both who have appeared in person and unrepresented.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W.P. Dyansobera

Judge