

**IN THE HIGH COURT OF TANZANIA  
(MAIN REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 2 OF 2021**

*(Arising from Bill of Costs No. 10 of 2019)*

**ZITTO ZUBERI KABWE.....1<sup>st</sup> APPLICANT**

**SALIM ABDALLA RASHID BIMANI.....2<sup>nd</sup> APPLICANT**

**JORAN LWEHABURA BASHANGE.....3<sup>rd</sup> APPLICANT**

**VERSUS**

**THE HONOURABLE ATTORNEY GENERAL.....RESPONDENT**

**RULING**

*26/07/2021 & 13/10/2021*

**Masoud, J.**

The applicants are aggrieved by the decision of Taxing Master of the High Court of Tanzania Main Registry delivered on 05/03/2021 in Bill of Costs No. 10 of 2019. The impugned decision had it that the total amount of money to be taxed and charged as costs incurred by the respondent is TZS 5,377,700/-. The Taxing Master, therefore, allowed the bill of costs to such extent.

The applicants intend to make a reference in this court against the decision. As they are out of time to file the intended reference, the applicants have filed the present application under rule 8(1) of the Advocates Remuneration Order, 2015 GN No. 264 of 2015 seeking extension of time within which to file the reference.

The application is supported by an affidavit of Ms Loveness Denis, learned Advocate from Misnak Law Chambers, who was in the conduct of the matter for the applicants herein before the Taxing Master. The application is opposed by the respondent, and a counter affidavit of one, Hangi Changá, a Principal State Attorney, for the respondent is in that respect on the record.

Both parties were represented by learned counsel. The application was thus conveniently conducted by filing written submissions. Both parties, dutifully, complied with the filing schedule set by the court, hence this ruling. The submissions filed on behalf of the applicants were prepared and filed by Loveness Denis, learned Advocate, while the opposing submission for the respondent were dutifully prepared and filed by Mr Elias Evelius Mwendwa, learned State Attorney.

Going by the affidavit in support of the applicants' case, the applicants complain that the ruling in respect of the Bill of Costs No. 10 of 2019 was delivered on 05/03/21 by Hon. Chaba, SDR (as he then was), having read only the final order taxing the costs at TZS 4,872,700/- and "*the reason for the decision were to be ready after obtaining the copy of the ruling.*" Despite subsequent follow-ups, the applicants could not obtain the copy of the ruling before the expiry of the time for preferring a reference. A copy of a letter referenced No. MISNAK/C-2021/06 of 11/3/2021 was produced to evidence the follow-ups.

It was further shown in the very affidavit that the last day for making reference, which was 26/03/2021, was declared by the Government to be a public holiday for the burial ceremony of the late President Dr John Pombe Magufuli. However, until such date, the copy of the said ruling was not yet to for collection. It was pointed out that the copy of the ruling was required for preparing meaningful grounds of the intended reference. There was, it was stated, no negligence or inaction on the part of the applicants. It was further stated that no failure of justice will occasion in granting the application.

The respondent's counter affidavit, by and large, denied the allegations. In particular, it was denied that the Taxing Master only read the final order leaving the reasons to be read by the parties upon receipt of the copy of the ruling. The allegations for close follow ups were noted as facts best known to the applicants. On a different note, the respondents added that there was no proof as to the alleged close follow-ups.

It was also pointed out in the counter affidavit that when the present application was filed on 14/04/2021, the applicant had already collected the ruling on 06/04/2021. It was insisted that there were no sufficient reasons advanced by the applicants for the delay which would have accounted for each day of the delay to warrant granting of the sought extension. It was in the end stated that the applicants were negligent in handling the matter.

The rival written submissions by the applicants and respondent are on the record. I need not reproduce them in their details. It is instructive that the rival submissions mirrored matters covered in the affidavit and the counter affidavit of the applicants and the respondent which were duly adopted in the respective submissions. In so doing, leading

principles in matters of extension of time were invoked in relation to circumstances pertaining to the present application.

On the part of the applicants, Ms Loveness Denis invoked the case of **Victoria Real Estate Development Ltd vs Tanzania Investment Bank Ltd and Others**, Civil Application No. 225 of 2014 which in a nutshell stated that the court should not only judge on whether or not there are sufficient reasons for the delay, but also for extending the time to take the intended steps. She also invoked **Diamond Trust Bank Tanzania Ltd vs Idrisa Shehe Mohamed**, Civil Application No. 89/15 of 2018 in relation to the averment that the applicants acted diligently, and the principle that diligence is a factor upon which the court may exercise its discretion in extending the time. With this authority, the court was shown how the applicants acted diligently by making follow-ups in vain.

On the part of the respondent, Mr Chang'a relied on **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 in relation to the principle that an applicant who is applying for extension of time must account for the entire period

of delay; the period of delay should not be inordinate; and the applicant must show diligence and not apathy, negligence or sloppiness.

In relation to the failure to account for each day of the delay, the learned State Attorney applied the case of **Ludger Bernard Nyoni vs National Housing Corporation**, Civil Application No. 372/01/2018 in arguing that the court must in such situation to dismiss the application. The period of seven (7) days between the delivery of the impugned ruling on 05/03/2021 and the writing of the letter requesting for a certified copy of the ruling on 11/03/21 was flagged out by the respondent's learned State Attorney in relation to his argument that there were no reasons shown for the delay in making follow-ups; bearing in mind that a reference has to be made only within twenty one (21) days of the delivery of the impugned decision.

As to the allegation that the applicants were negligent, the court was told that while the applicants were indeed out of time on 26/03/21, they filed the present application on 14/04/2021. In this respect, the court was invited to note that the impugned ruling was ready for collection on the very day of its delivery which is 05/03/2021.

It is worth noting that the applicants complained of, and submitted on, illegalities in the impugned decision of the Taxing Master, which were not in any way covered in the affidavit supporting the application. The same were to the effect that the Taxing Master failed to apply relevant principles when he taxed the sum of TZS 3,577,700/- for allowances of officers from the Parliament of the United Republic of Tanzania. In so doing, the counsel for the applicant went further to explain why such allowances should not have been taxed as a matter of law. The learned counsel cited in support the case of **Iddi Nzimano vs National Bank of Commerce** [2002] TLR 410, p.414, which had it that costs arising from over-caution, negligence, or mistakes or by payment of unusual expenses should not be allowed.

Although the arguments on illegality were challenged by the respondent's learned State Attorney for reasons that the alleged illegality was not apparent on the face of the record, and it was not established in the submissions, as per the principles propounded in **Lyamuya** (supra), I am inclined to disregard the point just as I hereby do so because there was no illegality alleged and/or stated in the affidavit supporting the application.

I have benefitted from the authorities relied on by the counsel for the applicants and respondent. They truly reflect the position of the law on matters of extension of time. In addition to such authorities, I am aware also of the case of **Alliance Insurance Corporation Ltd vs Arusha Art Ltd**, Civil Application No. 33 of 2015 where Mziray JA, said at page 2 of the judgment:

*Extension of time is a matter for discretion of the Court and that the Applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time.*

Indeed, the gist of the rival submissions was on the question whether there were materials disclosed upon which the court may exercise its discretion in favour of granting the extension of time. As far as I am concerned, the delay between the delivery of the judgment sought to be appealed from, and the filing of the present application was explained by the applicants with reasons.

The reasons given by the applicants in their account were as follow: The applicants had to wait to be supplied with a copy of the ruling delivered on 05/3/2021; the applicants made follow-ups immediately after the ruling, and had to make a written request on 11/03/2021, the present application was made on 14/04/2021 upon obtaining the copy of the



ruling; obtaining the copy of the ruling was necessary in raising meaningful grounds of reference, and the period of limitation (21) expired on 26/03/2021 which was declared a public holiday.

If one were to reckon from 26/03/2021 when the twenty-one (21) days expired to 14/4/2021 when the present application was filed, it is apparent that there was a delay of 19 days. Again, if one were to reckon from the date of the delivery of the ruling on 05/03/2021, there was a delay of a total of 40 days. The question is whether the materials put before the court by the applicants disclose sufficient reasons to enable the court to exercise its discretion in favour of extension of time.

In determining whether sufficient reasons were in the present instance shown, I am mindful of the circumstances of the present application, and guided by **Valerie McGivern v Salim Fakhrudin Dilal** Civil Application No. 11 of 2015 Tanga CAT where it was stated that:

*The law is settled.....that no particular reason or reasons have been set out as standard sufficient reasons. What constitutes good cause cannot therefore be laid down by hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case.*

The applicants, through their learned counsel, had it that they were not given the copy of the ruling on material day of delivery of the ruling while the respondent, through his learned State Attorney, had it that the ruling was available for collection on the very day of delivery. In so far as it is not disputed that the applicants made written request on 11/03/2021 for the said copy of the ruling which was delivered on 05/03/2021 and there is no evidence from the respondent that the said copy was indeed ready for collection on the same day of delivery of the ruling, I am not convinced that the copy of the ruling was available for collection on the day of the ruling (i.e 05/03/2021). Notably, the copy of the ruling annexed to the respondent's counter affidavit does not indicate when exactly it was certified, and issued to the respondents other than showing the date of its delivery.

It was not disputed that the applicant needed the copy of the ruling in order to prepare meaningful grounds of reference. As the copy of ruling was not ready for collection, the applicants could not therefore prepare and file the reference within the period of twenty-one (21) days counting from 05/03/2021 when the ruling was delivered. Thus, when twenty-one (21) days expired on 26/03/2021 which was declared public holiday, the applicants were still yet to get the copy of the ruling.

As there was no proof shown to me that the ruling was ready for collection on the same day of delivery, I find it hard to buy the respondent's view that the applicants were negligent; regard being had to their written request of 11/03/2021 for the copy of the ruling and drawn order. In the same vein, I am of the view that the delay was by all standards not inordinate and not occasioned by the negligence of the applicants. It is not without relevance to bear in mind that when the period of delay is reckoned in the present instance, one must in the circumstances also consider the time that the applicants would need to prepare a meaningful application.

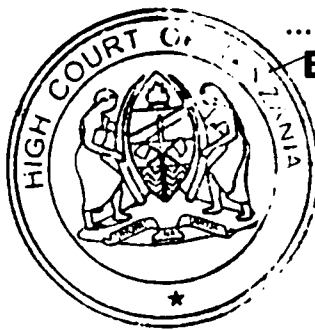
All said and considered, I am persuaded by the materials put before me and reasons emerging from such materials, to find that sufficient reasons have been shown for extension of time to be granted. In other words, I am persuaded that there are materials enabling the court to exercise its discretion in favour of the extension.

In the end, and for the reasons stated herein above, I would grant the prayers sought in the chamber summons as I hereby do so. Consequently, the extension of time is hereby granted for the applicants

to file the intended reference within twenty-one (21) days from the date of delivery of this ruling. Considering the circumstances of this matter, I will not make any order as to costs.

It is so ordered.

Dated and Delivered at Dar es Salaam this 13<sup>th</sup> Day of October 2021.



  
**Benhaji S. Masoud**  
**Judge**