IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPLICATION NO. 36 OF 2019

(Arising from the ruling in Land Case No. 10 of 2012)

MELICHIADES JOHN MWENDA ..... APPLICANT

VERSUS

JUMA MASOUD.....RESPONDENT

RULING

13th September, 2021 & 21st February, 2022

ISMAIL, J.

The Court is called upon to exercise its discretion and grant a prayer for extension of time within which to file Bill of Costs for taxation of costs awarded by the Court, in Land Case No. 10 of 2012. These costs were awarded on 18th October, 2018, but the taxation process was not instituted within time prescription se out by law.

Reasons for the delay have been stated in the affidavit sworn in support of the application. The contention is that certified copies of the ruling

and drawn order which are vital in instituting the Bill of Costs were supplied belatedly, despite the applicant's efforts to have them supplied within time. The applicant averred further that, whereas the certified copy of the ruling was supplied on 3rd June, 2019, proof of service of the said ruling was availed to the applicant on 27th June, 2019.

The application has been strongly resisted by the respondent who, through his counter-affidavit, has taken a swipe at the applicant's dilatory conduct. He stated that, whilst the ruling of the Court was delivered on 18th October, 2018, a request for the certified copies of the decision was made on 18th January, 2019, three months after delivery of the said decision. The respondent further averred that, after the decision was ready for collection on 3rd June, 2019, the applicant collected it on 26th June, 2019, and he has not accounted for 23 days and a further 6 of his inaction, before and after the copies were supplied to him.

On the parties' consensual basis, hearing of the application took the form of written submissions, filed consistent with the schedule drawn by the Court. Credit to the counsel for the parties, these submissions conformed to the schedule.

In his submission in support of the application, Mr. Frank Killian, learned counsel for the applicant, reiterated what the applicant stated in his

supporting affidavit. He argued that it took eight months for the Court to supply him with the copies of the decision. Counsel submitted that, by the time the said copies were out, 60 days set for filing the Bill of Costs had elapsed, adding that filing of the Bill of Costs would not be possible without the said copies.

Learned counsel further contended that the essence of time limitation is not to defeat ends of justice and, on this, he relied on the decision in ***Castellow v. Somerset Country Council*** [1993] All E.R. 952, in which it was held:

> *".... The rule of the Court and associated rules of practice, devised in the public interest to promote expeditiousness of litigation must be observed. The prescribed time-limits are not targets to be aimed at or expression of pious hope but requirements to be met."*

The applicant further implored the Court to be persuaded by the decision of the Court held in ***Mobrama Gold Corporation Ltd v. Minister for Energy, Minerals & 2 Others*** [1998] TLR 426, in which it was held:

> *"It is generally inappropriate to deny an extension of time where such denial will stifle his case as the respondents' delay does not constitute a case of procedural abuse or*

contemptuous default and because the applicant will not suffer any prejudice, an extension should be granted."

Learned counsel took the view that, since no prejudice has been suffered by the respondent and that the delay was not exclusively in the applicant's control, then the application is meritorious and it should be granted.

Mr. Khalid Rwebangila, learned counsel for the respondent, did not yield. He was convinced that the application is lacking in merit. While acknowledging that what amounts to sufficient cause has to be determined based on the circumstances of each case, he argued that it is the applicant's three-month wait between the date of delivery of the decision to the date he requested for such copies, that raises a few eye brows. He argued that the period is unmistakably inordinate and unaccounted for. He argued that, in terms of the decisions in ***Bushiri Hassan v. Latifa Lukio Mashayo***, CAT-Civil Application No. 3 of 2007; and ***Karibu Textile Mills v. Commissioner General (TRA)***, CAT-Civil Application No. 192/20 of 2016 (both unreported), every delay, even of a single day, has to be accounted for.

Mr. Rwebangila further argued that, though sufficient cause depends on deliberation of various factors, and must be out of control of a party, the

delay in being supplied with the copies of the decision cannot count in this case, in view of the fact that the applicant had not applied for such copies. He would not be expected to wait for something he had not asked for. He argued that his wait would be justified and amount to sufficient cause, in terms of the holding in ***Jonas Bethwel Temba v. Paul Kisamo & Another,*** CAT-Civil Application No. 17 of 2004 (unreported); and ***Mary Kimaro v. Khalfan Mohamed*** [1995] TLR 202, had the applicant had applied for the said copies. This would lead to the issuance of a certificate of delay which would condone the delay.

He took the view that no good cause has been shown, and the delay has not been accounted for to justify the delay and have the application granted.

The singular question distilled from the parties' contention is whether a case has been made out to support the prayer for extension of time.

The law governing the grant of extension of time is well settled across jurisdictions, including our own. It is to the effect that this is a discretionary remedy granted upon the party's ability to present a credible case, that sufficiently convinces the Court that reasons exist for such grant. It therefore takes the applicant to act in an equitable manner. This persuasive subscription was accentuated by the Supreme Court of Kenya in ***Nicholas***

Kiptoo Arap Korir Salat v. IEBC & 7 Others, Sup. Ct. Application 16 of 2014, in which it was observed:

> *"Extension of time being a creature of equity, one can only enjoy it if [one] acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that [one] was not at fault so as to let time lapse. Extension of time is not a right of a litigant against a Court, but a discretionary power of courts which litigants have to lay a basis [for], where they seek [grant of it]."*

This, therefore, requires meeting key conditions some of which were enunciated in the landmark decision in ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported). The conditions are:

> *"(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 he intends to take.*
> *(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."*

While imposition of the conditions governing extension of time may be viewed as unduly stringent, it should be appreciated that the intention is to reduce such grant to a mere walkover or an award that can be dished out indiscriminately and subjectively. Courts should also be mindful of the fact that a party should not be denied the right of appeal or any other step, unless circumstances of his delay in taking action are inexcusable and his or her opponent was prejudiced by it (see ***Isadru v. Aroma & Others***, Civil Appeal No. 0033 of 2014 [2018] UGHCLD 3.

In the instant application, the reason cited by the applicant is the delay in being supplied copies of the ruling and drawn order, despite lodging a request for them, followed by relentless follow up. What the applicant tries to imply is that filing of the Bills of Costs was curtailed or delayed by the delayed supply of the said copies. As I delve into assessing the sufficiency or otherwise of the reason, it is pertinent to ask if filing of the Bills of Costs is dependent on the availability of the copies of the ruling and drawn order.

Part of the answer to this question comes from Order 55 of the Advocates Remuneration and Taxation Orders, GN. 264 of 2015. This provision contains a checklist of requirements necessary for the institution of Bill of Costs. It reads as follows:

"55.-(1) Bills of costs shall show the case and title of the name concerned and shall be prepared in five columns, as follows-

(a) the first or left hand column for dates showing year, month and days;

(b) the second for the number of items;

(c) the third for the particulars of the service charged for;

(d) the fourth for the professional charges; and

(e) the fifth for the taxing officer's deduction.

(2) Disbursements shall be shown separately at the foot of the bill.

(3) Fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion by the taxing officer.

(4) Every bill of costs which shall be lodged for taxation shall be endorsed with the name and address of the advocate by whom it is lodged, and also the name and address of the advocate for whom he is agent."

My scrupulous review of the cited provision reveals that attachment of copies of the ruling and/or drawn order does not constitute a prerequisite for filing the Bill of Costs. This means that the significance of the certified copies of the decision does not lie in the appendage thereof on the

application. Rather, it is on what the Court underscored in ***DRTC Trading Co. Ltd & Another v. Juma Masoud***, HC- Misc. Civil Application No. 225 of 2021 (unreported), wherein it was held:

> *"What comes out clearly is the fact that attachment of a copy of the ruling or a drawn order is not one of the prerequisites, concluding the fact that the long wait for the said documents was not intended to meet any particular legal requirement. Nevertheless, it is quite clear that the Court that would be sat to determine the Bill of Costs would want to be assured that the said costs were awarded. Inevitably, such process would entail going through the ruling and convince the Court that costs were indeed awarded. It would also help to find out if such costs were awarded in whole or in part.*
>
> *Besides demonstrating that fact to the Taxing master, the applicants would also need it their tool in the preparation of the Bill of Costs. The totality of all this, convince me that the applicants have presented a plausible case worth of consideration by the Court."*

While the question of significance of the copies of the decision seems to have been settled, the next area of contention relates to the timing of applying for copies of the said decision and what happened after the same had been furnished. The contention by the respondent is that the process of

requesting for the said copies was procrastinated for three months, meaning that the actual request was made after the time prescription had long expired. The applicant has not denied this contention, connoting that the fault line of the applicant's action was exposed and no hiding place was located by the applicant. It implies that even if the said copies were supplied on the day the same were requested, the web of dilatoriness would not spare the applicant, and the application would inevitably fall through.

There is also an issue of a 23-day delay, constituting the period between the day the said copies were ready for collection (3rd June, 2019) and the day the applicant collected them (26th June, 2019). This delay has not been explained out as was the period of six more days that the applicant sat with the copies after they had been supplied to him. Overall, there are unanswered questions regarding the delays that came after the decision which awarded him costs had been furnished to him. This silence is what Mr. Rwebangila perceives, rightly so in my view, to be a failure to account for each day of delay, consistent with the decisions cited by the respondent, and was held in ***Godwin Ndewesi & Another v. Tanzania Audit Corporation***, CAT-Civil Application No. 57 of 1994.

The applicant has attempted to seek refuge in the holding of the Court in ***Mobrama Gold Corporation*** (supra), and urge the Court to hold that

the delay was not a procedural abuse or contemptuous default, especially where the respondent has not been prejudiced. With profound respect, this contention finds no purchase here. The dawdling conduct of the applicant in this case is no less than a contemptuous default that has kept the respondent in suspense, not knowing when the applicant would bounce back and unleash an onslaught in yet another round of court battles. The suspense is what I would call a prejudice that the respondent was subjected to.

In the upshot of all this, I hold the view that the application has not met the threshold that justifies its grant. Accordingly, the same is dismissed with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 21st day of February, 2022.

M.K. ISMAIL

JUDGE