

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
MISC. CIVIL APPLICATION NO. 44 OF 2021  
(Arising from Civil Case No. 225 of 2012)**

**TAHER H. MUCCADAM..... APPLICANT**

**VERSUS**

**GOVERNMENT OF LIBYA.....1<sup>ST</sup> RESPONDENT**

**REMUNERATION COMMITTEE OF  
THE TANGANYIKA LAW SOCIETY.....NECESSARY PARTY/2<sup>ND</sup> RESPONDENT**

**RULING**

Date of last Order: 18/05/2022.

Date of Ruling: 24/06/2022.

**E.E. KAKOLAKI, J.**

This Application by the applicant is preferred under section 14(1) of the Law of Limitation Act, (Cap 89 R. E 2019), Section 49(1) and 55(3) and (4) of the Advocates Act (Cap 341 R.E 2019) and Regulation 5(1) and (2) of the Advocates Remuneration Order-GN.No.263 of 2015. It is for two orders that:-

- a) That this Honourable court be pleased to grant the Applicant extension of time to file this application up to the date of filing.
- b) That this Honourable court be pleased to order the enforcement of the professional Remuneration Agreement dated the 16<sup>th</sup> November

2012 made between the Government of Libya and Taher Muccadam and order the 1<sup>st</sup> respondent to pay the sum of USD 3,950,000.00 to the Applicant.

c) That the costs of this application be provided for.

The set of facts giving birth to this application as gleaned from the Applicant's affidavit, Counter Affidavit and reply to counter affidavit can be narrated as hereunder. In October 2012, the 1<sup>st</sup> respondent instructed the Applicant who is also an advocate of the High court of Tanzania, to initiate legal proceedings against Meis Industries Co. Ltd and 2 Others, the obligation which was religiously performed by applicant vide Civil Case No. 225 of 2012, by filing it in this Court. In that legal services undertaking the two executed a Professional Service Agreement for the applicant to render services as agreed for consideration of USD 4,000,000 upon completion of the case. Advance payment of USD 50,000 was effected to the applicant coupled with USD 150,000 after part performance of the obligation under the agreement, thus the outstanding balance of USD 3,800,000, which its justification is contested by the 1<sup>st</sup> respondent on the ground that, the applicant failed to fully discharge his obligations under the agreement by prosecuting the matter under instruction on merit to its finality. Following that contest on 1<sup>st</sup>

January, 2016, the applicant unsuccessfully sued the 1<sup>st</sup> Respondent before this court claiming for the outstanding amount, as the same was struck out on 04<sup>th</sup> July, 2019, for want of service to the Defendant. Ten months after dismissal of the suit, on 4<sup>th</sup> May 2020, before this Court the applicant preferred an application for an order for enforcement of the said Professional Service Agreement, but the same was struck out on 1<sup>st</sup> September, 2020 with leave to refile it, on the reason of incompetence. Undaunted and being out of time to bring a proper application for enforcement of agreement, the applicant preferred this application for extension of time which is vehemently challenged by the 1<sup>st</sup> respondent as alluded to herein above.

Hearing of the application proceeded by way of written submission. The applicant proceeded unrepresented while the 1<sup>st</sup> respondent hired the services of IMMMA Advocates in which her submissions were filed by Mr. Gaspar Nyika and Ms. Samah Salah. The necessary party/2<sup>nd</sup> respondent seemed to be uninterested in the matter hence could not file the submissions.

Under section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019], (the LLA) this Court has unfettered jurisdiction to extend time to the applicant upon good cause shown. As to what amounts to good cause there is no fast

and hard rule as it depends on the assigned reason(s) which prevented the applicant from pursuing his action within the prescribed time in order to move the court exercise its discretion. See **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, (CAT-unreported) and **Jumane Hussein Bilingi Vs. Republic** (Criminal Application 2014 [2015]TZCA 65 (16 July 2015); www.tanzlii.org.tz. In assigning reasons the applicant has also to account for each and every day of day. See the case of **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007 (CAT-unreported) and **Alman Investment Ltd Vs. Printpack Tanzania and Others**; Civil Application No. 3 of 2003 (Unreported). It was held in **Bushiri Hassan** (supra) by the Court of Appeal that:

***“Delay, even a single day, has to be accounted for, otherwise there would be no meaning of having rules prescribing periods within which certain steps have to be taken...”***

In his submission in support of the application and justifying the delayed time the applicant advance two grounds. One, he contended was prosecuting in good faith other suits namely; Civil Case No.1 of 2016 and Miscellaneous Civil Application No.226 of 2020 in this court as the same were founded on

the same cause of action and relief, thus the ground is within the precinct of section 21(1) and (2) of the Law of limitation Act, [Cap. 89 R.E 2019]. Thus the time within which the said suits were under prosecution should be excluded in computing the period of limitation, the applicant contended.

As to the second ground, he claimed to have gone India for medical treatment in August 2020 and stayed there up to 6<sup>th</sup> September,2020, hence the justification that on the 1<sup>st</sup> of September, 2020 when the application was dismissed applicant was not present in the country. Copies of medical prescription from India were annexed to the affidavit and reply to the counter affidavit affirmed by him. To support this reason he cited the case of **Emmanuel R. Maira Vs. The District Executive Director, Bunda District Council**, Civil Application No. 66 of 2010 (CAT-unreported), where the Court of Appeal held that health matters can constitute good cause to account for delayed days. He thus prayed the Court to find the applicant has established good cause to justify the delay.

In rebuttal, the 1<sup>st</sup> respondent's counsels submitted that, the two grounds advanced by the applicant did not account for the delayed period. They said, the two suits Civil Case No. 1 of 2016 and Misc. Application No. 226 of 2020 were preferred by the applicant in ignorance of law and its rules of procedure

before they were struck out, hence he should not benefit from his own wrongs. The case of **Hadija Adam Vs. Godbless Tumbe**, Civil Application No. 206/06 of 2020 (CAT-unreported) was relied on to support the proposition that inadvertence and apparent ignorance of law and its attendant rules of procedure has never been accepted as sufficient reason or good cause for extension of time. On the second ground of sickness, it was their submission that the period of almost over one (1) year passed was not accounted for by the applicant since the striking out of Misc. Application No. 226 of 2020, with leave to refile until when the this application was lodged on 28/01/2021. According to them such period is inordinate as there is evidence on record to show when the applicant returned from India since the medical record shows he was to return to the hospital lastly on 06/03/2021. The cases of **Zito Zuberi Kabwe and 2 Others Vs. The Honourable Attorney General**, Civil Application No. 365/01 of 2019 and **Bharya Engineering and Construction Co. Ltd Vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017, (CAT-unreported), were cited to fortify the principle that the delay even of single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken. They thus submitted the

applicant failed to account for such inordinate delay consequently the application is liable to dismissal.

In his rejoinder, the applicant with authorities extensively dwelt on what amounts to sufficient cause while urging this court to take a liberal approach in interpreting it. With regard to the challenged second ground of illness it was the applicant's submission that even the 1<sup>st</sup> respondent in her counter affidavit noted that the applicant was in India for medical treatment between 27<sup>th</sup> August 2020 and 6<sup>th</sup> September, 2020. And further insisted that, the annexures explicates the instructions from Dr. A.B Patel to the applicant which permitted him to come back to Tanzania and continue with administration of tablets/drugs while under bed rest for 180 day until the next visit in India that was scheduled on 6<sup>th</sup> March, 2021. He was insistent of the preposition that, since health matters are reasonable grounds for extension as dictated in **Emmanuel R.Maira** (supra) then this court is bound to find the applicant has assigned good cause to warrant him extension of time. As to the submission that he acted without diligence and in ignorant of the law, he countered was astonished by the submission as the same is untenable in view of section 21(2) of the Law of Limitation Act ( Cap 89 R.E 2019) as well as the case law. That since the two suits aere

struck out to condemn him on lack of diligence and ignorance of law will amount of double punishment to him which act is prohibited under the law. To cement his stance he cited to the Court the case of **Fortunatus Masha Vs. William Shija and Another** [1997] TLR 154 at page 155 where the court stated that; *"the filing of an incompetent appeal which have been penalized by striking it out the same cannot be used again to determine the timeousness of applying for filing a fresh appeal.* And that such position was also applied in the case of **Eliakim Swai and Frank Swai Vs.Thobias Karawa Shoo**, Civil Application No.2 of 2016. With the foregoing the applicant prayed this court to be pleased to grant the application as prayed.

I have had enough time of going through the applicant's affidavit, Counter Affidavit, reply to counter affidavit, the written submissions as well as the authorities cited therein by both parties in this application. In essence the issue subjecting the parties to contest is whether the applicant has advanced good cause to warrant this court exercise its discretionary judiciously whether to grant him extension of time or not for him to file an application for an order to enforce the remuneration agreement. The law provides under rule 5(1) of the Advocate remuneration Order, GN.No.263 of 2015 that, the time limitation within which to enforce, set aside or determine as



to the validity or effect of remuneration agreement is sixty (60) days from the date on which the dispute arose. For easy reference I quote the same as hereunder:

*"5-(1) An application to enforce, set aside, or determine any question as to the validity or effect of a remuneration agreement may be brought to the taxing officer within sixty days from the date on which the dispute arose."*

In this application, the applicant seeks an enlargement of time to enforce the remuneration agreement which action was supposed to be brought within 60 days from the date on which dispute arose. Now the question here is when the dispute on remuneration arose. The 1<sup>st</sup> respondent in paragraph 15 of the counter affidavit says at any rate it should be before the filing of Civil Case No. 01 of 2016 meaning before 05/07/2016, which fact is disputed by the applicant in his reply to counter affidavit while calling the 1<sup>st</sup> respondent to strict proof of the same. It is true and I agree with the 1<sup>st</sup> respondent that, the dispute over applicant's fees arose before the institution of Civil Case No. 01 of 2016 on 05/01/2016, the suit which was also struck out on 04/07/2019. Looking at section 4 of the LLA, reckoning of time limitation commences from the date on which the right of action for accrues. With the above understanding, the right of action by the applicant in this

application accrued since 2015 when the dispute arose, meaning before 05/01/2016 when Civil Case No. 1 of 2016 was filed.

As alluded to above Civil Case No.1 of 2016 was struck out for improper service on 04/07/2019. Dissatisfied with such decision and after ten (10) had months lapsed, on 04/05/2020 the applicant made another attempt of filing an application for enforcement of the same agreement vide Misc. Application No. 226 of 2020, the application which again was struck out on 1/09/2020 for being improperly placed before the Deputy Registrar instead of this Court, before the present one was preferred on 28/01/2021. No account has been given by the applicant on the said ten (10) months between the 04/07/2019 when Civil Case No. 1 of 2016 was struck out until 04/05/2020 when Misc. Civil Application No. 226 of 2020 was filed. Such inordinate period no doubt goes against the principle of the law that in accounting for the days delayed each and every day must be accounted for as emphasized in the case of **Zito Zuberi Kabwe and 2 Others** (supra), **Bharya Engineering and Construction Co. Ltd** (supra) and **Bushiri Hassan** (Supra).

That aside I now move to determine whether prosecution of the two matters prior to the filing of the present application was conducted diligently and not in ignorance of law as claimed by the counsels for the 1<sup>st</sup> respondent. It is

without dispute that the applicant is a seasoned advocate hence conversant with governing law and procedures for enforcement of remuneration agreement. It was not expected of him to fail to effect service to the defendant in Civil Case No. 1 of 2016 or file Misc. Civil Application No. 226 of 2020 to the Deputy Registrar in contravention of the law as provided by section 55(3) of the Advocate Act, Cap 341 R.E 2019, that application for enforcement of agreement be directed to the High court. It is from that set of events, I am satisfied as submitted by the counsels for the 1<sup>st</sup> respondent that the applicant lacked diligence and acted in ignorance of the law when prosecuting the two matters. I therefore find the principle in **Hadija Adam** (supra) that inadvertence and apparent ignorance of law and its attendant rules of procedure has never been accepted as sufficient reason or good cause for extension of time, to be applicable in this matter. Hence the case of **Fortunatus Masha** (supra) relied on by the applicant is inapplicable in the circumstances of this case, to exclude the days spend by the applicant while prosecuting the two matters. Even if I were to hold as the applicant prayed that since he has already been penalised by striking out the two matters then the time spent in prosecuting them should not apply in the present application as held in the case of **Fortunatus Masha** (supra), still

that cannot bail out the applicant as the period delayed for ten (10) months in filing Misc. Application No. 226 of 2020 as found above remain unaccounted for.

Coming to the second reason of sickness as advanced by the applicant that when the said Misc. Civil Application was struck out on 01/09/2020, he travelled to India for medical treatment, I also find it not be good cause for the delay in filing this application. I am alive to the position of the law as stated in the case of **Emmanuel R. Maira** (supra) and relied on by the applicant that, health matters may be considered as part of good cause in an application for enlargement of time. Unfortunately, the annexure's attached to the applicant's Affidavit on medical records at India shows that the Applicant was undertaking treatment between 27 August 2020 up to 6<sup>th</sup> September 2020, and the next visit in India was scheduled on 6<sup>th</sup> March, 2021. It is not stated by the applicant in his affidavit as to when he returned in Tanzania from India nor did he depose as to whether he flew back for next visit and when if at all he did apart from claiming in his mere submission that he had to rest for 180 days. Assuming he came back from India on the next day after 6<sup>th</sup> September 2020, meaning on 07/09/2020, again the period of more than four (4) months between 07/09/2020 until 28/01/2021 when

this application was filed in Court remains unaccounted for too. I so hold as there is nothing to convince the court that at all that time the applicant was bed ridden as he managed to file this application even before his next appointment to India which was due on 06/03/2021. In exercising its discretion whether to grant extension of time or not the Court has to consider a number of grounds, such as whether the applicant has accounted for all of the period of delay, he has exercised diligence and not apathy, negligence or sloppiness in prosecution of the action he intends to take steps on, whether there is illegality on the decision sought to be impugned apparent on face of record or any other sufficient reason that prevented the applicant from pursuing his action within the prescribed time. See the cases of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT-unreported), **Jumane Hussein Bilingi Vs. Republic** (Criminal Application 2014 [2015]TZCA 65 (16 July 2015); [www.tanzlii.org.tz](http://www.tanzlii.org.tz) and **Moto Matiko Mabanga Vs. Ophir Energy PLC and 2 Others**, Civil Application No. 463/01 of 2017 (CAT-unreported), to mention few.

In this matter since the applicant delayed for more than five (5) years which delay no doubt is inordinate and since he has failed to account for such inordinate period and given the fact that when prosecuting the two matters before this application failed for exercise diligence but rather acted negligently and in ignorance of the law, I am satisfied and therefore shoulder up with the 1<sup>st</sup> respondent's proposition that he has failed to advance good cause warranting this court exercise its jurisdiction judiciously. Hence the issue is answered in negative.

All said and done, I am satisfied that his application is devoid of merit, thus is hereby dismissed in its entirety.

I order each party to bear its own costs.

It is so ordered.

DATED at Dar es Salaam this 24<sup>th</sup> day of June, 2022.



E. E. KAKOLAKI

**JUDGE**

24/06/2022.

The Ruling has been delivered at Dar es Salaam today on 24<sup>th</sup> day of June, 2022 in the presence of Ms. Lydia Susuma, advocate for the applicant,

Mr. Idrisa Juma, advocate for the 1<sup>st</sup> Respondent and Ms. Asha Livanga,  
Court clerk and in the absence of the 2<sup>nd</sup> Respondent.

Right of Appeal explained.

A handwritten signature in blue ink, appearing to be 'E. E. Kakolaki', written in a cursive style.

E. E. KAKOLAKI  
**JUDGE**  
24/06/2022.