

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

MISC. LAND APPLICATION NO 64 OF 2021

(C/F Application No 35 of 2018, Arusha District Land and Housing Tribunal)

MUSTAPHA BOAY AKUNAAY APPLICANT

VERSUS

MOSSES MEIMAR LAIZER RESPONDENT

RULING

24/5/2022 & 05/07/2022

KAMUZORA, J

The Applicant herein lodged this application under section 14(1) of the Law of Limitation Act CAP 89 R.E 2019 and Order 8(1) of the Advocate Remuneration Order 2015 seeking for extension of time within which to file application for taxation reference out of time against the decision issued by Hon. Mdachi in Misc. Application No. 35 of 2018 in the District Land and Housing Tribunal of Arusha. The application is supported by the affidavit sworn by the Fauzia Mustapha Akonaay, counsel for the Applicant and contested through the counter affidavit sworn by Emmanuel Sood, counsel for the Respondent. Hearing of the application was done by way of written submissions.

The fact of the matter leading to this current application as depicted from the record is such that, in the District Land and Housing Tribunal for Arusha in Application No. 35/2018 the Respondent being a decree holder filed an application for taxation of the bill of costs against the Applicant who was the judgment debtor and the DLHT issued its decision on 29/07/2020. The Applicant being aggrieved by the Tribunal's decision and as time to file a reference to this court had lapsed, he preferred this current application.

Submitting in support of application the counsel for the Applicant adopted the Applicant's affidavit filed in support of the application and submitted that, the delay in filing the reference was occasioned by the delay in admission of the application in the Judicial Statistical Dashboard System (JSDS) and the invoicing of the court fees.

The counsel explained that, after the ruling by the DLHT was delivered on 29/7/2020 the Applicant notified the Tribunal of his intention to file the taxation reference to the High Court through a letter dated 6/8/2020 and the Tribunal supplied the documents to the Applicant on 21/8/2020. That, the Applicant filed the taxation reference on 10/11/2020 through the JSDS system and the payment could not be made until 17/11/2020 as a result of the lack of invoice by the Court

Administration System. The counsel cited Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing (Rules, 2018 GN No. 148 of 2018 and insisted that, the delay was due to the complexity of the operation and management of the Judicial Statistical Dashboard System and the delay by the Registrar to issue the invoice for court fees to the Applicant. She termed it as an error on part of the officer of the court. In support of her submission the counsel cited the case of **Benedict Mumelo Vs Bank of Tanzania**, Civil Appeal No 12 of 2002 (Unreported), **Tanzania Sewing Machine Company Limited Vs Njake Enterprises Limited**, Civil Application No 56 of 2007 (Unreported). Basing on the above submission and case laws the Applicant prays that the application be granted with costs.

Contesting the application, the counsel for the Respondent adopted the contents of the Respondent counter affidavit and pointed out that, the ruling of the Tribunal was delivered on 29/7/2020 and was certified on 5/8/2020. He submitted that, the Taxation reference was supposed to be filed within 21days from the date the ruling was certified that is on 26/08/2020 and the same was not filed by the Applicant until 10/9/2022.

Referring paragraph 5 of the Applicant's affidavit the counsel for the Respondent argued that, there is no any proof from the Applicant that he was supplied with the ruling on 21/8/2020 hence the Applicant has not accounted the 16 days delay from 5/8/2020 to 21/8/2020. He cited section 110 and 111 of the Tanzania Evidence Act Cap 6 R.E 2002 to support his argument.

Referring paragraph 10 of the Applicant's affidavit where the Applicant claimed to have filed the application on JSDS on 10/11/2020, the counsel for the Respondent replied that, as per Rule 21 (1) of the Judicature and Application of Laws Act, (Electronic filing) Rules GN No. 148 of 2018 the Applicant was already late in filing the application as the Applicant was supposed to file his reference application on 26/8/2020. He added that, the requirement to account for each day of delay was held in the case of **Lyamuya Construction Company Limited vs The Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010 (Unreported). That, the Applicant was late in filing his application and cannot blame the court for his laxity and negligence. That, since the Applicant failed to account for each day of the delay, he should not benefit from the

extension of time. Basing on that submission the Respondent prays that the application be dismissed with costs for lack of merit.

In a brief rejoinder the Applicant's counsel stressed that, the date of filing the reference by means of electronic filing system is 9th September and not 10th November 2020. On the claim that the Applicant is blaming the court she replied that, the Applicant is stating the truth as there was technical error which caused injustice to the Applicant. He added that, the facts in the case of **Lyamuya construction** cited by the counsel for the Respondent are different with the facts in the present case. She thus reiterated the prayer that the application be granted.

The main issue calling for the determination by this court is whether the Applicant has demonstrated sufficient reasons for the grant of the application for extension of time. The law under order 7 rule 2 of the Advocates Remuneration Order GN. No. 263/2015 requires an application for reference to be filed before this court within a period of 21 days from the date of the decision.

The reasons for the delay have been stated by the Applicant under paragraphs 5, 6 and 7 of the Applicant's affidavit. That, the Applicant despite notifying the DLHT of his intention to file a reference, the copies

of the decision were late supplied to him. That, there was a delay in admission of the reference by the court and that initially she filed a reference which was struck out for being time barred.

The grant of extension of time is a matter of discretion of the court, the discretion which however, must be exercised judiciously. Moreover, the Applicant has to account for every day of the delay. For this see the case of **Bushiri Hassan Vs. Latifa Mashayo**, Civil Application No.2 of 2007 CAT (Unreported). From the case of **Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT (Unreported) as cited by the counsel for the Respondent, the court of Appeal of Tanzania has formulated the guidelines to be considered in the grant of extension of time where the court held that: -

"On the authorities however, the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged"

It is undisputed fact between the parties and pursuant to annexure A1 that the DLHT ruling was issued on 29/07/2020 and certified by the DLHT on 05/08/2020. It is the claim by the Applicant and pursuant to annexure A2, A3 that despite the Applicant request of the copies of the ruling the same was not supplied until 21/08/2020.

It is true that the law exclude time when the parties are waiting to be supplied with copies of judgement/ruling, decree/order and proceedings in counting the time to either appeal or file revision or reference. It is clear that the ruling of the Tribunal was delivered on 29/07/2020 thus, 21 days within which to file reference to this court was expiring on 11/08/2020. However, the Applicant claim that he applied to be supplied with copies by the Tribunal through a letter dated 6/8/2020 (annexure A2) but the Tribunal supplied the documents to the Applicant on 21/8/2020. The exchequer receipt for the copies was attached to this application. The main application was struck out as the Applicant failed to show evidence that the copies of the Tribunal decision was obtained on 21/08/2020. Now that he has attached evidence this court is satisfied that the same was supplied on 21/08/2020 the date he paid for the

copies. The law requires the dates before the supply of the copies have to be excluded when counting for time to file reference.

It was contended by the Applicant that the copies were certified on 05/08/2020 thus the counting should start from the date the copies were certified. I understand that certifying copies means that the copies were ready for collection from the date they were certified. But that does not mean that the Applicant was aware if the documents were ready for collection. It is in records that he wrote a letter on 06/08/2020 and no records if he was supplied with the same on that date or later date except on 21/08/2020 which is proved by receipt. I therefore maintain that the Applicant received the said copies on 21/08/2020 and the days to the date of receiving the copies are to be exclude when counting time to file reference.

Now, as the days waiting for collection of documents are excluded, the matter is whether the Applicant was still in time and if not whether, he has accounted for the delay. As the reference was supposed to be filed within 21 days, from the date the copies were supplied that is, on 21/08/2021 the date for filing was on 10/09/2021. It is in records as per the ruling of this court which referred the exchequer receipt for court fees that, the application was filed 17/09/2020 hence out of time for 7

days. The Applicant explained that, such a delay was caused by the filing system something that was out of his control.

The Applicant's explanation under paragraph 6 of the affidavit is that, on 10/09/2020 the Applicant filed the application through the JSDS system where the invoice was late to be issued until 17/9/2020. The admission notification was attached indicating that the application was admitted through JSDS on 09/09/2020. I find that the Applicant was able to justify the delay of 7 days. There is no doubt as deponed by the Applicant under paragraph 7 of the affidavit that, from 17/9/2020 to 10/08/2021 the Applicant was pursuing the application that was dismissed for being filed out of time. It is evident that, the Applicant had been in court corridors trying to pursue his right and after the application was struck out, he immediately preferred this application for extension of time.


I am mindful of the fact there is no hard and fast rule as to what constitutes a good cause. The power vested in the Court in extending time must be exercised judiciously, when determining good cause by considering circumstances of each case. I also understand that, a delay of even a single day has to be accounted for. Read the case of **Bushiri Hassan** (Supra) as well as in the case of **Interchick Company**

Limited V Mwaitenda Ahobokile Michael, Civil Application No 218 of 2016 CAT at Dar es Salaam (Unreported).

In the present application I am of the settled mind that, the Applicant has shown good reasons for grant of extension of time. The application is therefore granted. The Applicant is allowed to file the reference to this court within 14 days from the date of this ruling. No order for costs is granted.

Order accordingly.

DATED at **ARUSHA** this 5th day of July, 2022.


D.C. KAMUZORA
JUDGE
