

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 56 OF 2022**

**I & M BANK (T) LIMITED ..... APPLICANT**

***VERSUS***

**HI-BROS CANVAS & TENTS LIMITED ..... RESPONDENT**

***(Arising from the decision of this Court (Mongella, J.)  
in Civil Case No. 144 of 2017)***

**RULING**

4<sup>th</sup> and 15<sup>th</sup> July, 2022

**KISANYA, J.:**

The applicant, I & M Bank (T) Limited is seeking an extension of time to file an application for bill of costs in respect of the judgment of this Court in Civil Case No. 144 of 2017. The application is made under section 14(1) of the Law of Limitation Act [Cap. 89, R.E. 2019] and sections 3A, 3B and 95 of the Civil Procedure Code, Cap. 33, R.E. 2019. Supporting the application are the affidavits affirmed by Ms. Hamida Hassan Sheikh who introduced herself as the applicant's counsel and Fatma Said Baamary, the secretary of the applicant's counsel.

In terms of the supporting affidavits, the main reasons for the prayer of extension of time are to the effect that, following the verdict of the High Court (Mongella, J) in the judgment issued on 16<sup>th</sup> December, 2021, the applicant's counsel case file was misplaced. It was deposed further the case was recovered upon return to the office of the senior secretary who was on leave after being bereaved by her mother.

The application is being contested by the respondent vide the counter-affidavit affirmed by her Managing Director one, Parvez Abdulhussein Hirji. The respondent averred, among others, that the judgment was delivered on 26<sup>th</sup> November, 2021 and not 16<sup>th</sup> December, 2021 as deposed in the supporting affidavit. It was further averred that the applicant had not advanced sufficient cause for extension of time.

During the hearing of this application, the applicant enjoyed the legal services of Ms. Hamida Sheikh, learned advocate. The matter proceeded in the absence of the respondent who failed to appear without notice.

Arguing in support of the application, Ms. Sheikh prayed this Court to grant the application on the reasons stated in the supporting affidavits.

Having gone through the chamber summons, supporting affidavits and counter-affidavit and heard the submission in support of the application, the issue for determination by this Court is whether this application is meritorious to grant.

As indicated earlier, this application is premised on the provision of section 14(1) of the LLA. The said section empowers the court to exercise its discretion in granting an application for the extension of time upon the applicant demonstrating reasonable or sufficient cause to justify the delay. The phrase reasonable or sufficient cause is not defined by the law. It is determined basing on the circumstances of each case. However, case law has set out the factors to be considered by the Court in determining whether to grant extension of time or otherwise. For instance, in the case of **Yusuf Same and Another vs Hadija Yusuf**, Civil Appeal No. 1 of 2002 (unreported), the Court of the Court of Appeal observed that:

*"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to "sufficient cause" has not been defined.*

*From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant (See **Dar es Salaam City Council v. Jayantilal P. Rajani** - CAT Civil Application No. 27 of 8 1987 (unreported), and **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda** - Civil Application No. 6 of 2001 (unreported))."*

Similar stance was taken in the case **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

In the instant, I have considered that the senior secretary of the applicant's counsel who could have assisted the said counsel to trace the case for drafting the required pleadings was bereaved by her mother. I have considered that it was upon return of the said secretary when the case file was found thereby leading to the present application. In that regard, I am of the view that the delay was caused by the reason beyond the applicant. What happened to the secretary of the applicant's counsel cannot be branded as negligence as averred by the respondent?

I have also considered the respondent's contention that the judgment was delivered on 26<sup>th</sup> November, 2021 and not 16<sup>th</sup> December, 2021. However, it is gleaned from the supporting affidavits that, the judgment was issued on 16<sup>th</sup> December, 2021. Such fact does not necessarily mean the judgment was delivered on 16<sup>th</sup> December, 2021. One can interpret that fact to mean the date on which the copy of judgment was issued to the applicant. Therefore, this Court cannot hold that the supporting affidavits contain false information.

In the event, this application is found meritorious and granted. It is ordered that the application for bill of costs be filed within fourteen (14) days from the date of this ruling. Each party is ordered to bear its own costs.

DATED at DAR ES SALAAM this 15<sup>th</sup> day of July, 2022.



S.E. Kisanya  
**JUDGE**  
**15/07/2022**