

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC LAND APPLICTION No. 10 OF 2021

(C/F land case number 42 of 2021)

LESIRAT KASHIRO.....APPLICANT

VERSUS

VERANI HANGO..... RESPONDENT

RULING

30th June & 22nd July 2022

TIGANGA, J.

In this application Lesirat Kashiro herein after, the applicant, moved this court under Order 8(1) and (2) of the Advocates Remuneration Order, 2015 GN. No. 264 of 2015 praying for extension of time to file civil reference to challenge the cost taxed in Taxation Cause No. 3 of 2020 taxed by the Deputy Registrar, R.B Massam, of the High Court Arusha District Registry, in respect of the costs awarded in Appeal No. 34 of 2016.

Before filing that reference, he realized that he was late, therefore he decided to file this application seeking for the following orders:

- i. That, this Honourable Court be pleased to grant an order for extension of time in which to file a civil reference.

- ii. Any other orders which this Honourable Court may deem fit and just to grant.

The application was filed through the chamber summons supported by the affidavit of the applicant. Two main reasons were given to substantiate the application. First, that the ruling of taxation was delivered in the absence of the applicant and that he came to know about it after the time to file reference had lapsed. Second, is the illegality of the ruling sought to be challenged.

Although the respondent was served and appeared in court, he did not file counter affidavit in opposition of the application. Even when hearing of the application was ordered to be conducted in writing, he did not file his reply submission, therefore the hearing was *ex parte*.

In submission in chief, the applicant based his reasons into two sets; namely that, the ruling of taxation was delivered in absence of the applicant and that, he came to know about it after the time to file reference had lapsed and the illegality of the decision sought to be challenged.

On the first set, he submitted that, the impugned ruling was delivered on the 14th December 2020 in his absence. He became aware of the said

ruling on the 8th January 2021 when he was served with execution order intending to execute the said ruling.

He further submitted that, Order 7(2) of the Advocates Remuneration Order, 2015 provides for 21 days for the aggrieved party to file reference. However, when he was served with the copy of the ruling, time had already been lapsed. Therefore, he decided to file this application seeking for extension of time within which to file reference out of time.

The other ground in the second set, is illegality of the decision sought to be challenged. On that, he submitted that, the claimed amount was Tsh. 15,750,000/= but the taxing officer taxed Tsh. 1,710,000/= the amount which is not in compliance with the law which requires the grant made by the Taxing Officer not to be below one over six.

He further submitted that, if the extension of time will be granted, the intended reference stands overwhelming chance of success as the applicant was not even a party to the Land Case No. 1/2016.

As already pointed out, the respondent did not file reply, therefore, the only material which this ruling will base is the application and the submission in-chief.

That being a summary of the application, from the material before me, I find only one issue for determination that is, whether this application contains good cause for an order of extension of time to be granted.

Having passed through the applicant's submissions, what clicked into my mind is that, there is a fundamental principle that, in application for extension of time, accounting for the whole period of the delay is very crucial.

As it can be gathered from the submission and a number of authorities, the issue of extension of time is not a virgin land in this jurisdiction. A number of case authorities decided by both, this court and the court of appeal of Tanzania are in place to assist me. One of them being the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) in which the first principle established in that case is that, for extension of time to be granted, the applicant must account for each day of delay. For the court to grant the same, it should be satisfied that, the delay is inordinate and that, the applicant must show that he has been diligent in prosecuting the action he intends to take. That, he has not been negligent, apathy and sloppy in taking action. Lastly it may also grant the same where there

are other reasons like illegality of the decision intended to be challenged. I have passed through the Applicant's affidavit and noted some facts which will lead me in ascertaining as to whether the Applicant managed to account for the whole period of delay. Paragraphs 4 and 8 of the applicant's affidavit which to me are carrying substance of such delay are there for clarity. They are for easy reference reproduced here under as follows.

Para 4 *"That the said ruling was delivered in my absence as I was not aware that my Counsel had withdrawn himself from my case"*

While Para 8;

8 *"That due to the geographical location between where I live and where the Court is located, I have not been able to file this application on the next day"*

Commencing with para 4, the Applicant's allegation that he was not aware that his Advocate withdrawn from his case, I would rather consider it as his fault due to the communication barrier between him and his Advocate. I consider this issue as recklessness on the party of the applicant and his Advocate. That argument would have been meaningful had the applicant gone further to prove the Advocate's lack of diligence

in handling his case, it would have benefited him in line with the principle that, a client should not be punished for his Counsel's misconducts.

However, in the application at hand, the applicant's mere allegation that his delay was due to the fact that he was not aware that his Counsel have withdrawn from his case, does not qualify to be a good cause for accounting the delay.

In paragraph 7 of the affidavit he stated that, the moment he was served with the said ruling he realized that the time for filing reference had elapsed because it should be done within the period of 21 days. In paragraph 8 the applicant states that, having found that he is time barred to file such reference, even the next day he could not file it due to geographical location. It is my considered view that, the applicant has failed to account the delay is not only that he failed to tell this court when did he realize to be time bared, but also to substantiate the kind of geographical factor which contributed to his delay.

On that base, it is my considered view that, such facts under para 7 and 8 are meaningless as they don't account the period of delay but rather giving stories on the aftermath of the delay, which I would consider to have been overtaken by events.

Turning to the ground of illegality as one of the good cause for extension of time, as relied on order **48 of the Advocates Remunerations Order**, GN. No. 263 of 2015, which provides that:

"48. When more than one-sixth of the total amount of a bill of costs exclusive of court fees is disallowed, the party presenting the bill for taxation shall not be entitled to the costs of such taxation:

Provided that, at the discretion of the taxing officer any instruction fee claimed, may be disregarded in the computation of the amount taxed of that fee in the computation of the one sixth."

It is the principle that once illegality has been advanced as the ground for extension of time, it becomes good cause for extension of time even if the delay has not been accounted for.

This is an application for extension of time, at this stage I need not to go into details on the alleged illegality. It is enough at this stage, to find that the illegality has been pleaded and the applicant has sufficiently pointed out the area of his concern on that point.

Despite the fact that an applicant has failed to account for the whole period of delay, the fact that there is illegality alleged and pointed out by the applicant entitles him extension of time. That said, this application is

allowed, the applicant is hereby given 14 days from today to file taxation reference to the High Court.

It is accordingly ordered.

DATED at **ARUSHA** on this 22nd day of July 2022.



A handwritten signature in black ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA

JUDGE.