

IN THE HIGH COURT OF TANZANIA

AT TANGA

MISC. LAND APPLICATION NO. 3 OF 2021

*(Arising from MISC. LAND APPLICATION NO. 15 OF 2020, HIGH COURT,
TANGA)*

FANUEL MKAGULU..... APPLICANT

VERSUS

PETRO YOHANA MBUGUNI..... RESPONDENT

RULING

Date of RULING – 04/03/2022

Mansoor, J.

The Applicant filed an application seeking for an extension of time to file Bill of Costs. He made the application under Section 14 (1) of the Law of Limitation Act, Cap 89 R: E 2002.

The respondent had applied before the High court for extension of time to file the appeal against the decision of the District Land and Housing Tribunal for Korogwe in Land Appeal No. 37 of 2017, and on 06 November 2020, the application was not granted, and the applicant herein was awarded costs. The Applicant filed the present application on 2nd February 2021, almost 4 months later. The reasons for delay as submitted in his



affidavit is that the High Court delayed in furnishing the copy of Ruling. In his oral submissions during the hearing of the application, the applicant said he delayed filing the Bill of Costs as he was looking for bus fare to come to Tanga from Korogwe, and so he could not file the Bill of Costs on time.

Before I determine the application on merits, let's see if the application was filed under the proper provisions of the law, and whether this Court has jurisdiction to entertain an application for extension of time to file Bill of Costs.

The question of jurisdiction is fundamental, and the Courts must be certain and assured of its jurisdictional position before entertaining any matter, this was held in the case of **Faniel Mantiri Ng'unda vs Herman Mantiri Ng'unda & 20 others (CAT), Civil Appeal No. 8 of 1995** where it was held that *"the question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature.....the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.....it is risky*

and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case."

As said hereinabove, the Applicant made his application under Section 14 of the Law of Limitation Act, which provides as follows:

14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

(2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or the application.

The Bill of Costs is filed before the Taxing Master, and it is the Taxing Master who has jurisdiction to determine the Bill of Costs. There are no provisions under the Advocates Remuneration Order for extension of time to file the Bill of costs.

Order 4 prescribes for time to file Bill of Costs before the Taxing Master and there are no provisions allowing for extension of the prescribed time.

Order 4 of THE ADVOCATES REMUNERATION ORDER, 2015, provides as follows:

4. A decree holder may, within sixty days from the date of an order awarding costs, lodge an application for taxation by filing a bill of costs prepared in a manner provided for under Order 55.

Section 14 (1) of the Law of Limitation Act is also not applicable as there is no law that has allowed an extension of time to file Bill of Costs, as Bill of Costs is not an application envisaged by Section 14 (1) of the Law of Limitation Act. Bill of Costs is not an application, Bill of costs is a detailed assessment of costs spent by the parties in the Courts or Tribunals and these are conducted by Taxing Masters. The assessment of costs is governed by the relevant provisions of the Advocates Act, and the Advocates Remuneration Orders 2015 to the extent that such Act and Rules or Orders do not cover the present situation since even extension of time to file the Bill of costs is under the discretion of the Taxing Master, as such, such an application must be made before him,

Order 8 of the Advocates Remuneration Order allows for extension of time to file Reference to the High Court against the decision of the Taxing Master, and this application can be lodged to the High Court, and the High Court Judge has jurisdiction to entertain such application, this Order reads:

8.-(1) The High Court may subject to order 7 extend the time for filing a reference upon sufficient cause.

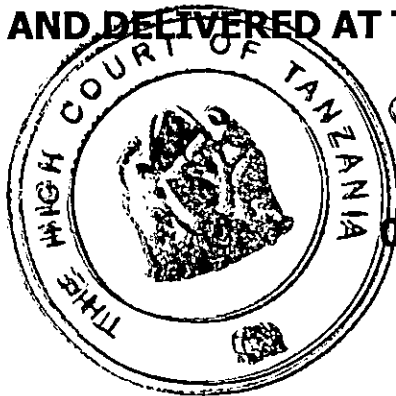
(2) An application for extension of time shall be made by way of chamber summons supported by an affidavit and be served to parties at least seven days before for hearing date.

Any request for an extension of the sixty days period for filing a bill must be made in writing to the Taxing Master and copied to the other parties. There is no provision of the law that allows a judge to entertain any application with regards to taxation of Bill of Costs, including the application for an extension to file bill of costs outside the period of 60 days prescribed by law. There is no law that has prescribed for an extension of time to file Bill of Costs to be by way of chamber summons supported by an affidavit. The High Court Judge is only empowered to entertain a Reference by an aggrieved party after the Bill has been taxed

by the Taxing Officer, and not before that. Thus, this application has been misplaced, it has been filed improperly and without citing the enabling provision of the law and it is hereby struck out. The respondent is entitled to costs.

It is so ordered.

DATED AND DELIVERED AT TANGA ON 4TH MARCH 2022



L. Mansoor
L. Mansoor
JUDGE
04/03/2022