

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM SUB REGISTRY)  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 502 OF 2021**

**PETER JOSEPH SWAI .....APPLICANT  
VERSUS  
TIB DEVELOPMENT BANK .....RESPONDENT**

**RULING**

Last Order: 12/8/2028

Ruling: 19/8/2022

**MASABO, J.:**

The applicant has moved this court under section 14(1) of the Law of Limitations Act [Cap 89 RE 2019]. He is praying for a leave for enlargement of time within which to lodge a bill of costs. The application is supported by an affidavit of Kephas Simon Mayenje, the applicant's counsel from which it is deciphered as follows. The applicant who practices law in a law firm styled as Legal Link Attorneys was instructed to represent the respondent in Civil Case No. 225 of 2021. To realize his remuneration, he filed a bill of costs under section 10(1) (2), (3) and (4) of the Advocates Remuneration Order, GN No. 264 but his application was struck out on 25<sup>th</sup> August 2021 for want of the *locus standi*. Desirous of pursuing his right further, he has come to

this court seeking the enlargement of time within which to lodge a fresh application. The application was sternly disputed by the respondent.

Hearing of the application proceeded in writing. Both parties were represented. The Applicant was represented by Mr. Kephas Mayenje, learned counsel whereas the respondent was represented by Mr. Stanley Kalokola, learned State Attorney. I have thoroughly read and considered the submission filed by both counsels.

According to Order 4 of the Advocates Remuneration Order, GN No. 264 of 2012 the time limitation within which to file an application for taxation of bill costs is sixty days from the date of an order awarding costs. This time may be extended under section 14 of the Law of Limitation Act [Cap 89 R.E. 2019] which vests in this court discretionary powers to extend the time within which the application may be lodged.

These powers need be exercised judiciously upon the applicant demonstrating a good cause for delay (**Finca (T) Ltd & Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, CAT

(unreported). The good cause is established by looking at such factors as the duration of delay whether the delay is not inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged (**Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015, CAT (unreported)).

The sole question to be answered is whether there exists a good cause upon which to enlarge the time. From the submissions, there is no dispute that there was an application filed timely in the name of the law firm, Legal Link Attorney and that the same was struck out for want of locus standi after it was held that it ought to have been lodged by the advocate who represented the counsel and not a law firm that is entitled to file the bill for costs. It is similarly undisputed that immediately after the said order the applicant, being the advocate who acted in the matter giving rise to the bill for costs, instituted the present application seeking for enlargement of time.

Asserting the existence of a good cause, Mr. Mayenje has argued that, a good cause upon which to grant the leave sought exists as the applicant has been diligent in pursuit of his right in court. He diligently and timely filed the application which turned out to be abortive for want of locus standi and he immediately thereafter filed the present application. In further fortification, Mr. Mayenje invited the court to consider the delay as merely technical and thereby allow the application.

On the respondent's side Mr. Kalokola argued that the defunct application should not be considered as the applicant was not a party to the said application. In the alternative he argued that the applicant acted negligently by filing the application in the name of law firm. In fortifying his argument that the abortive application should not be used as a shield, he cited a number of authorities including **Kambona Charles (as administrator of the estate of the late Chales Pangani) v Elizabeth Charles** Civil Application 529 of 2019, CAT where it was held that negligence by one's counsel is not a sufficient cause for extension of time.

Indeed, I agree with the position in this case as it reflects the law as it stands. However, this rule is not with exception and the said exception was well stated in **Yusufu Same and Another v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported) cited in the same case of **Kambona Charles (as administrator of the estate of the late Chales Pangani) v Elizabeth Charles** (supra) where it was held that:

"Generally speaking, an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time. This has been held in numerous decisions of the Court and other similar jurisdictions.... But there are times, depending on the circumstances surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicant's advocate as was held by a single Judge of the Court (Mfalila, JA, as he then was) in **Felix Tumbo Kisima v. TTC Limited and Another** - CAT Civil Application No. 1 of 1997 (unreported)."

This was cemented in **Zuberi Mussa v. Shinyanga Town Council**, Civil Application No. 3 of 2007 (unreported), also cited in **Kambona Charles (as administrator of the estate of the late Chales Pangani) v Elizabeth Charles** (supra) where, the Court of Appeal while dealing with a similar issue stated that:

"Advocates are human and they are bound to make mistakes sometime in the course of their duties. Whether such mistakes amount to lack of diligence is a question of fact to be decided against the background and circumstances of each case. If, for instance, an advocate is grossly negligent and makes the same mistake several times, that is lack of diligence. But if he makes only a minor lapse or oversight only once and makes a different one next time that would not, in my view, amount to lack of diligence."

Considering that it is not disputed that the applicant in the present application timely filed the abortive application in the name of his law firm and it is similarly undisputed that the instant application was filed immediately after the first application became abortive, I have no difficulty in holding that the present case falls under the exception. Accordingly, I subscribe to the invitation by Mr. Mayenje and proceed to consider the delay as a technical delay. I am further fortified in my finding by the decision of the Court of Appeal in **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd.**, Civil Reference No. 18 of 2006, Court of Appeal (unreported) where it was stated that:

"A distinction had to be drawn between cases involving real or actual delays and those such as the

present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted." [emphasis added]

In the foregoing, leave is granted to the applicant to file his application within 10 days from the date of this ruling. Costs to follow event.

**DATED at DAR ES SALAAM** this 19<sup>th</sup> day of August 2022.

8/20/2022

X



Signed by: J.L.MASABO

**J.L. MASABO**

**JUDGE**

