

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

MISC. CIVIL APPLICATION NO. 97 OF 2021

(C/f Arusha District Land and Housing Tribunal, Application No. 65 of 2016)

MUSTAPHA BOAY AKUNAAY APPLICANT

VERSUS

MOSES MEIMAR LAIZER RESPONDENT

RULING

05/07/2022 & 13/09/2022

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. The intention is to challenge decision by Hon. Kagaruki, Tribunal Chairman in the District Land and Housing Tribunal (DLHT) of Arusha in Application No. 65 of 2016. 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 (DLHT) for Arusha in Application No. 65 of 2016 the Respondent being the 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 14/07/2020. The Applicant being aggrieved by the decision of the taxing officer before the DLHT filed in this court, Reference No. 5 of 2020 but, the same was struck out for being time barred. He then preferred this current application praying for extension of time on the reasons well deponed under his affidavit.

In her submission in support of application the counsel for the Applicant adopted the affidavit filed in support of application and submitted that, the Applicant's delay in filing Reference was occasioned by the delay in admission of application through the Judicial Statistics Dashboard System (JSDS) and subsequent invoicing for the court fees.

The counsel for the Applicant explained that, the ruling of the DLHT was delivered on 14/7/2020, the certificate for taxation was issued on 21/7/2020 and the notice of intension to make reference to the High

Court was made on 6/8/2020. That, the Applicant was supplied with a copy of ruling and a certificate of taxation on 21/8/2020 and the reference was filed through Electronic Filing System on 10/09/2020, the control number was issued on 17/9/2020 and fees was paid on 19/9/2020 and the invoice was issued on the same date.

The counsel submitted that, according to section 19 (4) of CAP 89 RE 2019 and Rule 23 of the Electronic Filing System Rules, 2018 the Reference was filed within time that is 16 days after the receiving the ruling. It was the contention by the counsel that, the crocs of the matter are on the date and time of filing a document through the JSDS and on this matter the counsel urged this court to consider Rule 21(1) of the Judicature and Application of Law (Electronic Filing) Rules 2018 GN No 148.

The counsel further explained that, the Applicant's delay in filing his application was caused by the complexity of the operation and management of the JSDS for the delay by the Registrar to issue invoice for court fees to the Applicant. In support of his submission, she cited the case of **Benedict Mumelo Vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, **Tanzania Sewing Machine Company 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's counter affidavit and pointed out that, the ruling of the Tribunal was delivered on 14/7/2020 and was certified on 21/7/2020. He submitted that, the Taxation reference was supposed to be filed within 21 days from the date the ruling was certified that is on or before 21/08/2020 and the same was not filed by the Applicant until 10/9/2020.

The counsel argued that, the Applicants counsel has not attached any document proving her contention thus failed to meet the threshold for proof under section 110 & 111 of the Tanzania Evidence Act Cap. 6 R.E 2019. Regarding the contention that the Applicant paid for the ruling on 21/08/2020 he stated that, there is no proof that the judgment was supplied to him on that date. He insisted that, there are 16 days unaccounted from 6th August 2020 to 21st August 2020.

Referring paragraph 6 of the Applicant's affidavit regarding the dates of admission and payments, the counsel for the Respondent submitted that, annexure A4 does not prove the date of admission and invoice payments. He thus argued that, the Applicant has not accounted

for each day of delay. He supported his submission with 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. 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, section 19 (3) of the Law of Limitation Act Cap. 89 R.E 2019 excludes the period within which the ruling was sought. That, the counsel for the Respondent skipped to mention the date when the Ruling was supplied to the Applicant which was the date for filing a reference. On the case of **Lyamuya Construction** cited by the counsel for the Respondent, the counsel for the Applicant contended that the same relates to a different subject matter as the current matter is centred in the integration of manual practice and document e-filing procedures.

Having analysed the submissions by the counsel for the parties, 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 Applicant's contention is that, the application was filed on time but technically found to be out of time due to technical delay in admitting the application filed electronically through Judicial Statistics Dashboard System (JSDS) and subsequent delay by the Deputy Registrar in invoicing for the court fees. Under the Applicant's affidavit; paragraphs 4, 5, 6 and 7, the Applicant deposed that, despite notifying the DLHT of his intention to file a reference, the copies of the decision were late supplied to him. That, there was also a delay in admission of the reference by the court 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 in the later case

formulated 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 was argued by the counsel for the Applicant that the case of **Lyamuya Construction** (supra) is irrelevant to the matter at hand which its argument is based on electronic filing of the document. I however find his argument wanting as the said case addressed matters to be considered in granting an application for extension of time and the matter at hand being an application for extension of time the case of Lyamuya Construction is basically relevant.

It is undisputed fact between the parties and pursuant to annexure A1 that, the ruling of the DLHT was delivered on 14/07/2020. It is the claim by the Applicant and pursuant to annexure A2, A3 that

despite the Applicant's request for 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 to appeal or file revision or reference. See section 19 (3) of the Law of Limitation Act Cap 89 R.E 2019.

It is clear that, the ruling of the Tribunal was delivered on 14/07/2020 thus, 21 days within which to file reference to this court was expiring on 04/08/2020. Under paragraph 4 of the affidavit in support of application and annexure A2 the Applicant deponed that, he applied to be supplied with copies by the Tribunal through a letter dated 6/8/2020 (annexure A2). That, the Tribunal supplied the documents to the Applicant on 21/8/2020 as deponed under paragraph 5 of the affidavit which referred annexure A3. It is unfortunate that the said annexure is the exchequer receipt in respect of filing written submission dated 18/04/2020 and not related to obtaining copy of ruling as alleged by the Applicant. Hence, the date to which the Applicant was supplied with the copies of decision by the DLHT was not justified by the Applicant.

Even if we assume that the copies were real supplied on 21/08/2022 as alleged by the Applicant it is my observation that, at the

time the Applicant requested to be supplied with copies he was already out of time. The decision was made on 14/07/2020 in which 21 days within which to file reference to this court was expiring on 04/08/2020 but the letter requesting for copies was issued on 06/08/2021 and no explanation was made for the delay from 04/08/2021 to 06/08/2021.

The Applicant claimed that, after being supplied with copies on 21/08/2021 he filed the Reference No. 5 of 2020 on time and blamed the JSDS for technically causing delay in admission and issuance of the invoice for payment of court fees on time. But as pointed out in the previous paragraph, the Applicant failed to account for each day of delay before the filing Reference No. 5 of 2020. When Reference No. 5 of 2020 was called in court the Applicant conceded to the objection that the application was time barred and it was struck out with costs. Having concede to that, he cannot at this juncture come with an argument that it was not time barred. The Applicant in this matter is only bound to justify each day of delay as so propounded in a number of cases.

For this, I join hands with the submissions by the counsel for the Respondent as well as the cited authorities that, the Applicant was unable to justify the delay in the set standards. As per the above analysis, the Applicant has failed to account for each day of delay to

warrant the grant of extension of time. The application is therefore devoid of merit hence, dismissed with costs.

Order accordingly.

DATED at **ARUSHA** this 13th Day of September, 2022.



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora", is written over the seal.

D.C. KAMUZORA

JUDGE