

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION No. 72 OF 2022**

*(Originating from Taxation Cause No. 5 of 2020 of the Resident Magistrate Court of Arusha  
from Civil Case No. 21 of 2019 of Resident Magistrate Court of Arusha)*

**ALLIANCE INSURANCE CORPORATION LIMITED..... APPLICANT**

**VERSUS**

**KIBO INSURANCE LIMITED..... RESPONDENT**

**@KIBO INSURANCE CORPORATION LIMITED**

Date: 29/9/2022 & 4/10/2022

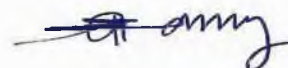
**BARTHY, J**

**RULING**

This application has been brought at the instance of Alliance Insurance Corporation, by way of chamber summons under Order 8(1) and (2) of the Advocates Remuneration Order, 2015. The chamber summons is supported by the affidavit of Barbara Thomson, the principal officer of the applicant.

The applicant is seeking before this court for orders;

1. To grant an extension of time for the Applicant to file Reference in respect of the Ruling made by the Resident Magistrates' Court of Arusha before Hon. M.J. Mahumbuga, SRM vide Taxation Cause No. 05 of 2021 delivered on 20<sup>th</sup> September 2021 out of time.
2. Costs be provided for



3. Any other relief(s) as the Honourable court shall deem proper to grant in the circumstances of the Application.

The application was contested by the counter affidavit of August Michael Tarimo, the principal officer for the respondent.

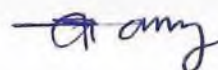
On the date fixed for hearing of this matter, the applicant was well represented by advocates, for applicant was Mr. George G. Mzava and for the respondent was Mr. August Tarimo.

Mr. Mzava, made his submission in favour of the application and adopted the affidavit to be part of his submission. He went on to argue that, it is the principle that the court would give an extension of time if the party would give sufficient reasons which may include but not limited to the following;

(i) the length of the delay, (ii). the reason for delay, (iii). whether there is an arguable case and (iv). the degree for prejudice to the respondent if the time will be extended.

He argued the principle was laid down in the case of **Mbogo v. Shah** (1969) EA 93 which had annunciated the factors above mentioned. He added, what constitute sufficient reason, cannot be laid down by any hard or fast rule. But it has to be determined by circumstances for each particular case.

In the case **Ratna v Cumrasamy and another** (1965) 3AER, 933 at page 935A it was held that the rules of court must, prima facie be obeyed, and, in order to justify the court extending time during which some steps



in procedure requires to be taken, there must be some material which the court can exercise its discretion.

He went further to state that the affidavit sworn by Barbara Thomson invites two grounds to be considered by this court, as to whether they constitute sufficient reason or not;

1. The applicant unawareness of the proceedings and ruling with respect to Taxation Cause No 05 of 2021.
2. There is illegality and irregularity on the face of record.

He was of the firm mind that, regardless of strong contention from the respondent that the applicant was dully served with the summons, he claimed that the applicant was not aware of the existence of such proceedings. It was until on 24<sup>th</sup> May, 2022 after the applicant was served with the summons to show cause on 19<sup>th</sup> May 2022. Then the perusal of the file was made by an applicant's advocate. The reference was made to paragraphs 7, 8 and 9 of the affidavit.

He also argued that, it is undisputed that the applicant had delayed for 8 months from the time the ruling was delivered, but she also delayed for 20 days after becoming aware of it.

On the second ground, he submitted that there is illegality and irregularity on the face of record. The proceeding of the Taxation Cause (supra) which is intended to be challenged by the applicant, contains illegality and irregularity on the face of record. He pointed out to Annexure AICL-1 of the affidavit, on the name of the defendant both in the judgment and decree was Kibo Insurance Limited.

He went on to state, it was from that judgment and decree where the defendant was granted costs against Alliance Insurance Corporation Ltd. He admittedly stated, the anomaly of mis-naming the defendant on Civil Case No. 21 of 2019 was the clerical error capable of being cured by S. 96 of CPC, Cap 33 R.E. 2019.

He further pointed out that, the said clerical error has been rectified vide Application for Stay of Execution on Misc. Civil Application No. 14 of 2022 before the Resident Magistrate court of Arusha where Hon Mbelwa SRM ordered Hon. Mwankuga to rectify the same. The rectification was done on 13/9/2022 which implies that, at the time the Application for Taxation Cause was filed the erred judgment and decree was in place.

It was his argument that the rectification of the said error was to be done before filing of the Taxation Cause. Because could not have the retrospective effect on Taxation Cause (supra).

He added according to Rule 4 of the Advocates Remuneration Order of 2015, it requires the decree holder to file Taxation Cause within 60 days. In order to find out who is the decree holder, the reference should be made to the judgment and decree which had given the right to that effect (Annexure AICL-1).

He emphasized that it was illegal and irregular for Resident Magistrate court of Arusha to proceed with Taxation Cause containing error on the face of it. As the respondent chose to ignore to notify the court on the said error while knowing it had powers to do so under s. 96 of the CPC. In the case of **MIC Tanzania v. Hamisi Mwinyijuma and 2 others**, Civ Appeal No. 64 of 2016 HC at Dar es salaam (unreported) the court



ruled that the error could not be cured at that stage. The cited case was said to have similar issue of mis-naming of the parties with the one before this court. He thus thought, if this court will grant an extension of time to file for reference the error will be corrected.

Mr. Mzava firmly submitted that; an illegality of the decision challenged constitutes sufficient reason. In the case of **Principle Secretary Ministry of Defence and National Service. V. Durham P Vallambya** [1992] TLR 387 the court held on page 389 that, when the illegality of the decision is being challenged, it constitutes sufficient reason to enlarge the time for compliance.

Also, in the case of **City Bank (Tanzania) Ltd v. TTCL and others**, Civ App NO 97 of 2003 CAT (unreported) quoted with approval the case of **John Tilito Kisoka v. Aloyce Abdul Minja**, Civil Application No. 3 Of 2008 at page 7 the court held the same. Similarly in the case of **Tropical Air (Tanzania) Ltd v. Godson Eliona Moshi** Civil Application No. 9 of 2017 CAT at page.

On top of that, he urged this court to use its discretionary power to grant extension of time basing on that reason. To amplify the point he had the case of **Omary Ally Nyamalege v. Mwanza Engineering Works**, Civ App No. 94/08 of 2017 CAT at page 13 the court stated, without the details of the alleged illegality, but it has to be apparent on the face of record and that they are of sufficient importance to merit the attention of the court. See the case of **Tropical Air** (supra) at page 14.

He went on to state, the respondent will not in any way be prejudiced if this application will be granted. The garnishee nisi order was said to be in

place as the security for costs as seen on the record of the respondent. In the case **Mobrama Gold Corporation Ltd v. Minister for Energy and Minerals and others** [1994] TLR 425 the court held that, it is generally inappropriate to deny a party an extension of time if it will thrive his case.

To conclude, Mr Mzava stated that, the respondent's delay will not constitute a case of procedural abuse or contemptuous default and since the applicant will not suffer any prejudice the extension should be granted.

He thus prayed the application to be granted, so that the illegality can be rectified and set the record clear. As decided in the case of **Celina Chibago v. Finhas Chibago**, Civil App No 192 of 2007 CAT quoting in approval the case of **Tropical Air (supra)** at page 13 where it was held, that the court has the duty to ascertain and take appropriate measure to rectify the situation. This will be possible if the court will grant extension of time for leave to file the reference.

Mr. Merinyo the counsel for the respondent before addressing matters in this application, he first made reference to Article 107A(2)(e) of the Constitution of the United Republic of Tanzania which requires the court to adjudicate matters without being bound by the technicalities.

He went on to state that, regarding the claim that the applicant was not aware of the Taxation Cause No. 05 of 2021, he contended that to be baseless as Barbara Thomson signed to accept the summons to show cause in the proceedings of the said matter. He added that the applicant's

conduct is the abuse of court process. She should have appeared in court and raise said the issue before the court.

He contended further that; the applicant could not account on 267 days from the date the service of summons was accepted by Barbara Thomson on 28/6/2021 to make appearance on Taxation Cause No. 05 of 2021, until this application was filed.

Mr. Merinyo was of the firm view that what occurred in the judgment and decree of the court was just a human error and there was nothing illegal as the content and substance were all legally. The error was rectified under S. 96 of the CPC and it has been signed to reflect the day the judgment was delivered. Therefore, the Taxation Cause No. 05 of has the proper decree.

Mr. Merinyo argued this court to use its inherent power under s. 95 of the CPC as the court to call and examine the record of Civil Case No. 21 of 2019 and see there is no illegality on the judgment and decree of the said matter.

He moved further to state that the court has the discretion to grant extension of time to file the application. But that power must be used judiciously and in accordance to the law and not by opinion as submitted by the counsel for the applicant.

To buttress his argument there was the decision of the CAT in Civil Appeal No. 2 of 2010 between **Lyamuya Construction Co. Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, on page 5 and 6 where the court did set the guideline before it grants the extension of time as follows;

- a. The applicant must account for all the period of delay
- b. The delay should be inordinate
- c. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- d. If the court feels that there are other sufficient reasons such the existence of a point of law or sufficient important, such the illegality of the decision sought to be challenged.

With respect to the conduct of these matters Mr. Merinyo stated, the applicant was so sloppy as she intentionally absconded the proceeding of the court and that should not be taken lightly.

To wind up, Mr. Merinyo remarked, if the court will grant this application, it will set a bad precedent and the respondent will be forced to appear again in court and address the matter that has already been dealt with. He thus prayed to the court not grant this application as there was no reason offered by applicant to warrant this court grant the prayer.

Mr. Mzava on his rejoinder submission he reiterated his argument in chief and maintained that the applicant was not aware of the Taxation Cause No. 05 of 2021. He insisted the mis-naming of the party was the serious defect which requires the court to address it by granting the application. He maintained the case of **MIC Tanzania Ltd (supra)** should be considered.

Mr. Mzava agreed that in granting the extension of time the court must exercise it in accordance to the law. However, he maintained that the guideline stipulated in the case of **Lyamuya Construction Co Ltd** is not the rule of the thumb to be followed in order.



He agreed with the counsel for the respondent that the errors on the names can be cured with s. 96 of the CPC. He added, the decree and judgement of Civ Case No. 21 of 2019 were not illegal, but the illegality and irregularity is on Taxation matter No. 05 of 2021 which was instituted before the error on the names was rectified.

He concluded saying that, rectification cannot act retrospectively, he therefore prayed the application to be granted as prayed.

The court having heard the rival submission which were very extensive, also having carefully gone through the affidavit, counter affidavit and considering the rival submissions from both sides, it is the duty of this court now to determine this application. The only issue to be addressed is;

*Whether the applicant has the sufficient good cause to warrant this court grant the application.*

Regarding this matter, we are guided by Rule 8(1) of the Advocates Remuneration Order, GN. 263 of 2015 it provides;

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

Admittedly, the term sufficient cause has not been clearly defined by any statute, therefore the court in assessing the same is under discretion, but it has to be used judiciously. There are various decisions of the court that gives guidelines or factors to be considered when the court determining the same. See **Bertha v. Alex Maganga**, Civil Reference No. 7 of 2016, Court of Appeal of Tanzania (unreported).

It has been gathered from this matter that; the respondent had filed Taxation Cause No. 05 of 2021 for costs of the suit from the decision of the Resident Magistrate Court of Arusha on Civil Case No. 21 Of 2021 where the respondent was granted the costs.

It was hinted that the applicant did not turn out before the court on the proceedings of Taxation Cause No. 05 of 2021 whose ruling was delivered on 20/9/2021. The execution therefore was determined in her absence to recover the costs awarded.

The applicant is now before this court seeking to challenge the said decision of the Taxation Cause, but since she is out of time, she thus seeks for extension of time to pursue the right to reference before this court.

Expounding further, the counsel for the applicant urged that, there was mis-naming of the parties on the decree used to file for Taxation Cause No.05 of 2021 which is fatal. Through the amended plaint, the named parties before the original suit were Alliance Insurance Corporation Limited v. Kibo Insurance Limited @ Kibo Insurance Brokers Limited.

But the judgment and decree of the trial court was made between Alliance Insurance Corporation Limited v. Kibo Insurance Limited. According to Mr. Mzava, the defect was apparent on the face of record which makes the decision unenforceable for being irregular and illegal. He stated, by reason of irregularity and illegality, the court should consider it to be a good cause to extend time in the application before this court.

The counsel for the respondent contended that the defect on the name was already cured with the trial court under s. 96 of CPC. Therefore, the

anomaly has been cured and the decision of the said Taxation Cause is valid. Again, he added that the applicant was aware of the Taxation matter and they ought to have raised the issue of names there.,

The applicant's counsel sees the anomaly of name to have not been cured. As it was done after the Taxation matter was already filed which makes the Taxation matter worth of reference.

It is not in dispute that in the former judgment and decree of the court in Civil Case No. 21 of 2019 was made for Alliance Insurance Corporation Limited v. Kibo Insurance Limited, what was missing was the *alias* name (Oxford Advanced Learners Dictionary defines it to be a *false or different name*).

On the affidavit of Barbara Thomson, the principal officer of applicant on page 4 it was deposed, that the registered business name of the respondent and what is displayed in the MEMART was Kibo Insurance Limited which had prompted the applicant to amend the plaint prior.

I am also guided by the decision on the case of **Ngao Godwin Losero Mwarabu**, Civil Application No. 10 Of 2015, CAT at Arusha (unreported) quoting with approval the decision of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where the court held that;

*...in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasised that such point of law*

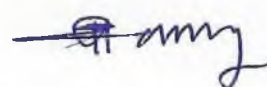
*must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; **not one that would be discovered by a long-drawn argument or process.** [emphasis is supplied]*

With regard to the issue of misnaming, it is apparent that the name that was left out was the "*alias name*," referred in addition to the name of the respondent. Therefore, the cited case of **MIC Tanzania Limited v. Hamisi Mwinyijuma and 2 others** (supra cited by the counsel for applicant) where the appeal filed appeared to read the matter is between "MIC Tanzania Limited v. Hamisi Mwinjuma, Ambwene Yesaya and Cellulant Tanzania Limited" but in the original matter it was between "Hamis Mwinjuma and Ambwene Yessayah v. MIC (T) Limited", this case is distinguishable with the present matter before this court.

In consideration of the cited cases above, I find that there was no illegality or irregularity apparent on the face of record of Taxation Cause No. 05 of 2021 (supra) worth of being considered to be the sufficient good cause to warrant this court use its discretion to extend time to file reference on the said matter.

On another hand, looking the rule in the case of **Lyamuya Construction Ltd (supra)** that, each of delay of day it has to be accounted for. The applicant had delayed for eight months, the only reason she offered was that she was not aware the matter was before the court.

The importance of this rule is to avoid unnecessary delays which can't be faulted on the party of the applicant. On the respondent's side they





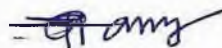
claimed that the applicant was serviced with the summons which was received by Barbara Thomson the principal officer for the applicant.

Even if the applicant was not aware of the matter, she claimed to have learned about the said case on 19/5/2022, whereas the present matter was admitted before this court on 13/6/2022. For the whole period in between, the applicant could not account for the time he had delayed to file the application. I consider these periods to be an inordinate delay as rightly pointed out by the respondent.

According to the analysis above, I find that in the circumstances of this case, the court cannot exercise its discretion to grant the application. In the upshot the application is dismissed with costs.

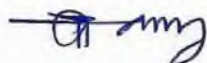
It is so ordered.

**DATED at Arusha** this 4<sup>th</sup> October, 2022.



**G.N. BARTHY**  
**JUDGE**  
**4/10/2022**

Judgment delivered in the presence of Mr George Mzava the Counsel for the applicant and Mr. August Tarimo the counsel for the respondent.



**G.N. BARTHY**  
**JUDGE**  
**4/10/2022**