

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA

MISC. LAND APPLICATION NO. 22 OF 2022

(Arising from the High Court of Tanzania (Bukoba Registry) in Civil Reference No. 5 of 2020 and Misc. Land Application No. 35 of 2019 from the District Land and Housing Tribunal for Kagera at Bukoba)

WIFRED RWEBUGISAAPPLICANT

VERSUS

FIDELIS JOSEPH MTEMI1ST RESPONDENT

DEOGRATIAS JOSEPH MTEMI2ND RESPONDENT

EXPARTE RULING

Date of Ruling: 30.09.2022

A.Y. Mwenda, J.

The applicant being dissatisfied by the decision of Taxing Officer in Misc. Application No. 35 of 2019 filed Civil Reference No. 5 of 2020 before this court challenging the correctness of the said decision. The said Civil Reference was struck out on 11th February 2022 for being incompetent hence the present application. This application is brought under section 7(1) & (2) and section 8 (1) and (2) of the Advocate Remuneration Order GN 263 of 2015 supported by the applicant affidavit.

During the hearing of this application, this Court after being satisfied that the respondents were duly served with the summons to appear by endorsing their signatures (i.e. on 22/03/2022 for the first respondent and on 23rd March 2022

for the second respondent) ordered the hearing of this application to proceed ex parte against them.

When invited to submit in support of his application, the applicant submitted that, on 2nd November 2020 the Taxing Master in Misc. Application No. 35 of 2019 ordered the respondents to pay costs of the suit to a tune of TZS 1,518,010/=. He stated that the said application was filed out of statutory time as there was a delay of 3 days because the said taxation cause ought to be filed within 60 days from the date of an award.

He submitted that he filed Civil Reference No. 5 of 2020 before this court so as to challenge the said decision but the said Civil Reference was struck out on 11th February 2022 due to discrepancy of accompanying affidavit. He further submitted that after the order striking it out he filed the present application for extension of time on 16th February 2022 because he was already out of statutory time. He thus prayed this application to be allowed.

Having gone through Applicant's submissions as well as the court records it is the duty of the court to determine the fate of the present application.

From the onset it is important to note that this court has discretionary powers to grant or refuse an application of extension of time but such discretion has to be exercised judiciously according to rule and principle of justice. The guiding principle in granting or refusing application for extension of time is the answer

to an issue as to whether the applicant must demonstrate sufficient cause or reasons for the delay.

In the case of LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF TRUSTEE OF YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION 2 OF 2010, four principles which guide the court before exercising its discretion were laid down, these are

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

That being the legal position the issue in this application is whether or not the applicant has advanced sufficient reasons for the delay.

From the applicant's submissions two reasons for the delay put forward by the applicant. One is that Civil Reference No. 5 of 2020 was struck out by this court due to discrepancy on the affidavit and two that there is illegalities in the proceedings and judgment in Misc. Application No. 35 of 2019.

From the applicant's submission, he stressed that he filed Civil Reference No. 5 of 2020 in time before this court but the said Reference was struck out on 11th February 2022 on technical grounds hence the present application for extension

of time which was filed in 16th February 2022. This court went through the records and found out that from the date when Civil Reference No. 5 of 2020 was struck out to the date of filing the present application, there is a delay of 4 days which the applicant did not account for. As I have pointed out earlier, one of the principles for determination in application for extension of time as propounded in the case of LYAMUYA CONSTRUCTION COMPANY LTD (SUPRA) is that the applicant must account for each and every day of delay.

Again, in his application, the applicant alleged illegality on the proceedings and the judgment in Misc. Application No. 35 of 2019 as one of issue to be considered in granting extension of time. He said the said application was determined while it was already out of statutory time. In a bid to find answers to this allegation this court went through the tribunal's records and found out that the issue of time limitation was raised as preliminary point of objection. Having heard the submissions from the parties the tribunal determine it by stating that if the last day of filing an application is the public holiday, then the next working day is a proper day to file the said application, and it said, since the next working day was the date when the respondents filed their application then the said application was within time. This court also considered this point by going through section 19(6) of the Law of Limitation Act CAP 89 R.E 2019, the period of limitation prescribed for any proceedings expires on a day when the court is closed, the proceedings may be instituted on the day which the court reopen. Since the last day that the respondents ought to have filed the

Misc. Application No. 35 of 2019 by 2/2/2019 which was Saturday, then by virtue of Section 19 (6) of Law of Limitation Act the period expired on 4/2/2019 when the court re opened. That being said, there was not any illegality with Misc. Application No. 35 of 2019 and for that matter I found no merits with this ground.

From the foregoing observation this court is of the view that the applicant has failed to account for each and every day of delay from the date of striking out of Misc. Application No. 35 of 2019 to the filing date of this application.

Basing on the above analysis I hereby dismiss this application. There is no order as to cost.

It is so ordered.




A.Y. Mwenda

Judge

30.09.2022

This exparte ruling is delivered in chamber under the Seal of this Court in the Mr. Wifred Rwebugisa the Applicant and in the absence of the Respondents.




A.Y. Mwenda

Judge

30.09.2022