

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI

MISC. LAND CASE APPLICATION NO. 15 OF 2022

(Misc. Application(Bill of Costs) No. 292 of 2021, Originating from
Miscellaneous Application No. 62 of 2020 of Moshi District Land and
Housing Tribunal)

DAINESS KIMAMBO.....APPLICANT

VERSUS

CLEMENCE O. MBOWERESPONDENT


RULING

1/9/2022 &13/10/2022

SIMFUKWE, J.

This is an application for extension of time for filing reference against the decision of Moshi District Land and Housing Tribunal in Bill of Costs No. 292 of 2021 dated 3rd February, 2022. The application has been made under **Order 8(1) and (2) of the Advocates Renumeration Order,2015**. It is supported by the affidavit sworn by Mr. ChiduoZayumba, learned counsel, which was contested by the counter affidavit deponed by therespondent.

The application was argued through written submissions. The applicant was represented by Mr. ChiduoZayumba, learned counsel while the respondent was represented by Mr. Joseph Peter, learned counsel.


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The applicant's advocate submitted to the effect that the applicant is seeking for extension of time to file reference against the decision of the Tribunal in Bill of Costs No. 292/2021 in which the respondent was awarded Tsh. 6,410,000/- being costs incurred in an application for setting aside the ex-parte ruling. That, the said application was dismissed with costs on point of law that the applicant had cited wrong provision of the law. Following such dismissal, the respondent filed bill of costs which was decided in his favour on 3/2/2022 hence, this application.

Mr. Chiduo advanced two grounds to support this application. The first ground on which the applicant relied upon for the court to extend time is that the applicant was not aware of the date of ruling and that the tribunal did not notify the applicant the date of ruling thus, denying him right to be heard.

Elaborating more on this ground, it was stated by Mr. Chiduo that there were frequent adjournments on the reason that the respondent's advocate was sick. The applicant prayed the matter to proceed by way of written submissions. The parties complied to the schedule and the ruling was fixed on 18/11/2021. However, on that date, the ruling was not ready it was adjourned to 15/12/2021 though the case file was not called in the Tribunal's chamber. The applicant was told that the file was in possession of the Chairman for composing the ruling. After several follow ups, on 24/3/2022 the applicant found that the ruling was delivered on 3/2/2022 hence, she opted to file the instant application which was admitted on 4/4/2022.



The learned counsel for the applicant contended that in Tribunals the procedures are different from normal courts since in normal courts the files are adjourned by either a Deputy Registrar, Resident Magistrate or in case of subordinate courts cases are adjourned by fellow magistrates who are available or justice of peace in case the magistrates are not around.

He averred that, in Tribunals cases are adjourned by Tribunal Clerks and if the later is not present, cases are adjourned by Intern Clerks and when the Chairman return, he will sign the coram as if he was present. Basing on that experience, Mr. Chiduo argued that even if it is written or signed by the Chairman as if he was present, but in actual sense he was absent and the matter was adjourned by an intern clerk.

It was submitted further that the Tribunal delivered its ruling without informing/notifying the applicant herein contrary to **Order XX rule 1 of the Civil Procedure Code, Cap 33 R. E 2019.**

Another reason which the learned counsel sought this court to consider in granting extension of time is found at paragraph 9 of the affidavit. That, the tribunal did not consider the applicant's submission which contained four pages; hence denied the applicant right to be heard.

The learned counsel submitted further that it is a principle of law that when a court rejects a party's argument, it must show that it has considered the argument and give reasons for rejecting it. To substantiate this argument, Mr. Chiduo referred to the case of **Tanzania Breweries Limited vs Anthony Nyingi, Civil Appeal No. 119 of 2014** which held that:



"If a court of law decides to accept or reject a party's argument, it must demonstrate that it has considered the same, and set out the reasons for rejecting or accepting it. Otherwise, the decision becomes an arbitrary one."

Furthermore, Mr. Chiduo referred to the case of **HumbaloFedinandi vs Marick Joseph Magubika, PC Civil Appeal No. 2 of 2002** HC (Unreported) to support his argument.

On the strength of the above authorities, it was submitted that the purported decision of the Taxing Master contain illegality for basically denying the applicant herein right to be heard. That, the Tribunal did not consider the applicant's argument without stating reasons.

Mr. Chiduo also explained to the court that the position of the law is that where there is allegation of illegality, it constitutes a good cause for extension of time. He referred to the cases of **Principal Secretary Ministry of Defence and National Service v Devram P. Valambhia [1992] TLR 387** and **Kalunga& Company Advocates Ltd vs National Bank of Commerce Ltd [2006] TLR 235** to support his submission. He urged the court to grant the application sought.

In reply, the learned counsel for the respondent stated that the applicant did not take any legal action until on 6/4/2022 when she filed the present application after 62 days had elapsed from 3/2/2022 when the impugned ruling was delivered.

It was stated further that the Court of Appeal had laid down principles to be considered in application for extension of time through the decision of **LyamuyaConstruction Ltd vs Board of Trustee of Young**



Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 in which it was held that:

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

Concerning the 1st requirement of accounting for each day of delay, Mr. Joseph contended that the applicant did not account for days of delay from 3/2/2022 when the Ruling in Taxation Cause No. 292/2021 was delivered to 6/4/2022 when she filed the present application. That, neither the applicant's affidavit nor her submission explained on what transpired between the date of ruling to the date of filing this application. Thus, the applicant failed to account for each day of delay. Therefore, her application falls short under the principle established by the Court of Appeal. He prayed the court to dismiss the application with costs. Mr. Joseph stressed the point of accounting for each day of delay by referring to the case of **Sebastian Ndaula vs Grace Rwamafa, Civil Application No. 4 of 2014 (CA)**.

Mr. Joseph continued to submit that for an application of extension of time to be granted, the applicant must also show that the delay is not inordinate. The learned counsel said that in this case the delay of 62 days was very inordinate taking into account that the applicant was aware of the date of Ruling in Taxation Cause No. 292 of 2021 and she

participated during the hearing of the said Taxation Cause and the time limit for filing reference is 21 days from the date of ruling.

On the principle that the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; Mr. Joseph submitted that the applicant acted negligently and did not show any diligence in filing her intended reference and the instant application. It was reiterated that; the applicant was present on the date fixed for ruling in Taxation Cause No. 292 of 2021 and she participated in the hearing but did not show up when the ruling was delivered and she did not make follow up to collect copy of the ruling in the Tribunal Registry.

It was submitted further that the allegations that the applicant made follow up have no supportive evidence. There is no proof of any written letter to prove that fact taking into account that before the Tribunal the applicant was represented by an advocate.

Moreover, at paragraph 7 of the affidavit, the applicant's counsel said that he became aware of the impugned ruling on 24/3/2022. Mr. Joseph stated that as an advocate, the learned counsel remained idle until on 6/4/2022 when the present application was filed before this court. He opined that this revealed that she did not take prompt action in pursuing this matter before this court. However, the affidavit of the learned counsel is silent as to when the applicant became aware of the ruling of the aforesaid taxation cause. Thus, the applicant was not diligent enough to pursue her right before this court, and there was negligence on part of the Applicant in taking prompt and reasonable action which

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could be taken by any reasonable and diligent person in making follow up of her right.

Mr. Joseph cemented his argument by citing the case of **Royal Insurance Ltd vs Kiwengwa Strand Hotel Ltd, Civil Application No. 116 of 2008**(unreported) in which the Court observed that:

"It is trite law that an applicant before the court must satisfy the court that since becoming aware of the fact that he is out of time, acted very expeditiously and that the application has been brought in good faith."

Responding to the allegations that the applicant was not aware on the date of ruling; Mr. Joseph stated that the same is misconceived and made out of context since determination of the said execution was determined inter parties and both parties were given right to be heard. It was the opinion of the learned counsel that if the applicant was diligent in pursuing her matter, she could have found the copy of the ruling and taken reasonable action immediately. However, she slept over her right and did not act with reasonable promptitude until on 6/4/2022 when she filed the present application. Thus, the 62 days were unnecessarily wasted and unaccounted.

Mr. Joseph emphasized that the delay does not warrant the court to invoke its discretionary power to extend time as sought since it will attract abuse of the law and court process. Reference was made to the case of **Zilaje vs Feubora (1972) HCT 3** to support the point.

Replying to the allegation in respect of the tribunal proceedings, it was stated that there was no proof to prove that the Tribunal Clerk or Trainee assumed the position of the Chairman when the Chairman was

absent. Also, there was no proof to show that the Tribunal Chairman signed on the date while he was absent as if he was present on that date. Mr. Joseph prayed the court to disregard all allegations by the learned counsel for the applicant.

Mr. Joseph reiterated the requirement of accounting for each day of delay. He cited the case of **Sebastian Ndaula** (supra) which he had cited earlier. He concluded that the applicant did not account for each day of delay. Further, that the delay is inordinate and the applicant acted negligently, with relaxation and carelessness. Finally, he prayed the court to dismiss the application with costs.

In rejoinder, the applicant's advocate reiterated what has been submitted in chief. He insisted that he was not notified of the date of the decision.

In addition, Mr. Chiduo submitted that the time spent for preparation and filing of documents was sufficient ground for extension of time and that 12 days were reasonable for preparation and filing of documents. He referred the court to the case of **Damari Watson Bijinja vs Innocent Sangano, Misc. Civil Application No. 30 of 2021(HC)**.

The learned counsel of the applicant also insisted that the applicant has shown sufficient and reasonable grounds for extension of time to file reference against a decision of the Tribunal which condemned the applicant to pay unreasonable excessive amount of costs for a matter which was concluded at the stage of preliminary objection.

The learned counsel submitted further that if the application will be rejected the applicant will suffer huge and irreparable loss as she was condemned to pay similar amount of Tsh 6,410,000 in another matter

which is pending before this court whose ruling is similar to the impugned ruling.


Mr. Chiduo insisted that this application has merits and the applicant has shown sufficient cause for extension of time. He prayed the same to be granted.

Having considered the submissions of both parties as well as their respective affidavits, the issue for determination is ***whether the applicant has advanced sufficient reasons for the court to grant extension of time.***

It is trite law that granting an application for extension of time is in the discretion of the court. However, the applicant is required to establish sufficient reasons for the delay for the court to exercise its discretion judiciously. I am grateful that the learned counsels for the parties cited numerous decisions in respect of the factors to be considered in granting extension of time. In addition to those authorities, the Court of Appeal in the case of **Hassan Ramadhani vs Republic, Criminal Appeal No.160 of 2018**, at page 6 stated that: -

"It is plain that the High Court's power to admit an appeal after the lapse of period of limitation is not predicated on any benchmark. It is discretionary based on reasons placed before the High Court by a party who seeks admission of his appeal out of time."

Having these words in mind, I now turn to the application at hand. As per the applicant's chamber summons, the applicant is praying this court to extend time so that she can file application for reference against the



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decision of the trial Tribunal in Bill of Costs No. 292 of 2021 which was delivered on 3/2/2022.

The learned counsel for the applicant has advanced two reasons for the court to grant extension of time. The first reason for delay in filing reference on time was that, neither the applicant nor his advocate was aware of the date when the ruling was delivered. That, the applicant became aware of the said ruling on 24/3/2022. The learned counsel for the respondent did not support this allegation. He argued that the applicant did not account for each day of delay. That, the applicant was present when the date for the ruling was fixed and she participated in the hearing. However, she did not make follow up to collect her ruling.

I have studied carefully the parties' submissions in respect of this ground. I am of considered opinion that the applicant has failed to account for each day of delay as required by the law. From 3/2/2022 when the impugned ruling was delivered to 4/4/2022 when she filed the instant application it is 62 days. In accounting for these 62 days, it was alleged that the applicant was not aware as to when the said ruling was delivered as she made follow up in the tribunal registry until on 24/3/2022 when she found that the ruling was delivered on 3/2/2022.

With due respect to the learned counsel for the applicant, the applicant did not state when she made the alleged follow up in the Tribunal Registry. In other words, the applicant has failed to account for the days from 3/2/2022 when the impugned decision was delivered to 24/3/2022 when she alleged that she was aware of the said ruling. There is no evidence to prove that the applicant made the said follow ups in vain.

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Also, the applicant did not account for the days from 24/3/2022 when she was made aware of the impugned ruling to 4/4/2022 when she filed the instant application. It has been underscored that delay even of a single day must be accounted for. In the case of **Philipo Katembo Gwandumi vs. Tanzania Forest Services Agent and Permanent Secretary, Ministry of Natural Resources and Tourism, Revision Case No. 891 of 2019**, it was held that:

*It is also a tenet principle of law that, in application for extension of time a party should account for each day of delay. This is the position in numerous decisions including the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** (unreported) the Court of Appeal held that; I quote "delay of even a single day, has to be accounted for. Otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."*

On the basis of the above authority, the applicant has failed to account for each day of delay. Thus, the first reason has no legal legs to stand.

The learned counsel for the applicant also raised the issue of illegality of the impugned ruling to the effect that the applicant's submission was not considered thus, he was curtailed right to be heard.

It is an established principle that whenever there is illegality, even if the applicant has failed to account for each day of delay, the court must exercise its discretion and extend the time sought. The Court of Appeal emphasized this in the case of **Ezrom Mages Maryogo v Kassim**



Mohamed Said and Another, Civil Application No. 148/17 of 2017 which held that:


"...a claim of illegality of the challenged decision, constitutes a sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay..."

In the instant matter, based on the alleged illegality, I am of settled mind that failure to consider the submission/evidence of the party when composing the ruling comprises the issue of law which deserve to be considered, since failure to consider the party's evidence is as good as curtailing that party right to a fair trial. It is from the pointed-out illegality that this court exercise its discretion and grant the application sought by the applicant.

In the event, I hereby grant the application without costs. The applicant should file her intended reference within 21 days from the date of being supplied with a copy of this ruling.

It is so ordered.

Dated and delivered at Moshi this 13th day of October, 2022.


S. H. SIMFUKWE
JUDGE
13/10/2022