

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOB A DISTRICT REGISTRY

AT BUKOB A

MISC. APPLICATION NO. 73 OF 2022

(Arising from Bills of Costs No.9 of 2022 in Land Case No.5 of 2020)

NILE EQUITORIAL SUBSIDIARY ACTION PROGRAM (NELSAP).....APPLICANT

VERSUS

KORONEL KYARUZI KISHEGESHE.....RESPONDENT

RULING

13/09/2022 & 10/11/2022

E. L. NGIGWANA, J.

By way of chamber summons made under section 14 (1) and 21 (2) of the Law of Limitation Act, [Cap 89 R.E 2019], this court is moved to exercise its discretion and grant a prayer for extension of time within which to file a fresh Bill of costs.

The application is supported by an affidavit and supplementary affidavit, both affirmed by the applicant's learned advocate Mr. Sinare Zaharan. Upon being served with the chamber summons, the respondent through Mr. Peter Matete, learned advocate, filed a counter affidavit contesting the application.

As depicted from the both affidavits supporting the application, the background which gave rise to this application may be recounted as follows; in Land Case No.5 of 2020, the respondent herein sued the applicant herein claiming a total sum of **Tshs.398, 600,000/=** being loss

occurred during the construction of the electricity generating power plant (Rusumo Electricity Project) and general damages at the tune of **Tshs. 500,000, 000/=**.

When the matter was called on for mention, Mr. Peter Matete, learned advocate who appeared for the plaintiff, now respondent prayed to withdraw the plaint with leave to re-file after he had noted that the matter was filed as a land case while the contents in it and relief sought shows that it is a tort case. The prayer was granted, and considering that since the filing of the matter the defendant, now applicant had been attending in court through her advocate, the respondent was ordered to pay the costs of the matter from the date of filing to the date it was withdrawn.

In that respect, the applicant through the legal services of Mr. Daudi Ramadhani from the law firm namely; Rex Advocate filed a Bill of costs No.9 of 2022 consisting of 26 items together with disbursements making a total of **Tshs. 172, 282, 567.81/=**

When the Bill of costs was called on for taxation, the respondent's advocate Mr. Peter Matete, raised two preliminary objections challenging the competence of the Bill of Costs on the grounds that additional documents to be relied upon offends order 56 of the advocates Remuneration Order, 2015 and that the Bill of Costs was not accompanied by a drawn order hence incompetent.

The preliminary objections were orally argued, whereas ultimately, that is to say; 21/06/2022, the second limb of preliminary objection was sustained. Consequently, the Bill of costs was struck out with costs.

On 28/06/2022 the applicant through advocate Sinare Zaharan wrote a letter requesting to be supplied with certified copy of drawn order extracted from Land Case No. 05 of 2020 but as per supplementary affidavit filed on 15/08/2022, the said drawn order was availed to the Applicant on 11/07/2022. The applicant's affidavit is further to the effect that this application has been filed promptly following the order of the Hon. court made on 21/06/2022 aforesaid.

The counter affidavit sworn by Mr. Peter Matete contesting the application is to the effect that, the affidavit for the applicant's counsel does not show any sufficient cause why time should be extended.

At the hearing of this matter, the applicant was represented by Mr. Zaharan Sinare, learned advocate from Rex Advocates while the respondent was represented by Mr. Projestus Mulokozi, learned advocate from Orbit Attorneys.

Submitting in support of the application, the Mr. Sinare adopted the affidavits supporting the application to form part of his submission and reiterated what has been averred therein. He added that the period used by the applicant to prosecute Bill of Costs No.9 of 2020 constitutes the so called technical delay which is also sufficient cause for extension of time as per the Court of Appeal decisions in **KABDECO versus WETCU Limited**, Civil Application No.526/11 of 2017, **Fortunatus Masha versus William Shija and Another** [1997] TLR 154, **Eliakim Swai and Another versus Thobias Karawa Shoo**, Civil Application No. 2 of 2016 and **Victor Rweyemamu Binamungu versus Geoffrey Kabaka and Another**, Civil Application No. 602/08 of 2017. The learned counsel went

on submitting that the current application was filed on 29/06/2022 that is to say; 8 days after the decision which struck out Taxation Cause/Bill of costs No.09 of 2022. He urged the court to be guided by the decision in **Victor Rweyemamu Binamungu versus Geofrey Kabaka and another (Supra)** a delay of 7 days, but the Court of Appeal proceeded to grant extension of time on the ground that the application was promptly filed.

In reply, Mr. Mulokozi adopted the counter affidavit contesting the application to form part of his submission. He submitted that the extension of time can only be granted where the applicant has demonstrated sufficient cause for the delay. He went on submitting that the Bill of costs was struck out for incompetence, but the applicant's advocate has not explained the cause of the incompetence and in absence of the explanation, that suggest that the applicant was negligent and as a matter of law, negligent has never been a ground for extension of time. He made reference to the case of **Bruno Wenceslaus Nyalifa versus The Permanent Secretary, Ministry of Home Affairs and Another**, Civil Appeal No.82 of 2017. The learned counsel added that; it is trite law that the applicant has to account for every day of the delay. He went on submitting that in the instant matter, the applicant delayed for eight (8) days but every day of delay has not been accounted for. Mr. Mulokozi ended up his submission urging the court to dismiss this application with costs because the applicant has failed to demonstrate sufficient cause to warrant extension of time as sought by the applicant.

In rejoinder Mr. Sinare admitted that there was such delay but according to him, it was not inordinate delay. He prayed that this court be guided by the decision of the Court of Appeal **Bruno Wenceslaus Nyalifa versus The Permanent Secretary, Ministry of Home Affairs and another (Supra)** where the delay of 7 days was found not inordinate. He added that refusing this application will amount to punishing the applicant twice because he was already punished by striking out Bill of Costs No.9 of 2022.

Having considered affidavits in support of the application, counter affidavit against the application and submissions by the learned advocates, the issue for determination is whether the applicant has demonstrated sufficient cause to warrant extension of time.

This application was made under section 14 (1) and 21 (2) of the Law of Limitation Act, Cap 89 R.E 2019 which provide as follows;

Section 14 (1) *"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

Section 21 (2)

"In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded

where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

Reading the herein above provision, it is clear that, upon application by the applicant, this court may, **for good cause**, extend the period of limitation for the institution of an application either before or after the expiration of such period prescribed by the law. It is also clear that in computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

It is settled law that a grant or refusal of an application for extension of time involves the exercise of the discretion of the court. This position was stated in the case of **Mumello versus Bank of Tanzania (2006)** E.A 227 where the court held that;

"... an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause"

In **Regional Manager TANROAD Kagera versus Ruaha Concrete Company Ltd**, Civil application No. 96 of 2007 CAT (unreported) the court held that;

"The test for determining an application for extension of time is whether the applicant has established some material amounting sufficient or good cause as to why the sought application is to be granted.

What amounts to sufficient cause or good cause is not defined in the statutes. However, in the case of **Lyamuya Construction versus Board of Registered Trustees**, Civil Application No.2 of 2010 CAT (Unreported), factors to be considered before granting or refusing extension of time are; whether the applicant has accounted all days delayed, whether the delay is inordinate or not, whether the applicant has shown diligence, and not apathy negligence or sloppiness in prosecution of the action that he intends to be taken. Last but not least, if the court feels that there is any point of law of sufficient importance such as the illegality involved in the decision sought to be challenged.

Furthermore, the court of appeal of Tanzania in the case of **Masalu versus Tanzania Processing Ltd**, Civil Application No. 13 of 2020 held that-

"What constitute good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one, is dependent upon a party seeking extension to prove the relevant material in order to move the court to exercise its discretion".

Generally, from the herein above Court of Appeal authorities, it can be learnt that extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the court. The applicant must give valid, clear and sufficient reasons upon which the discretion can be favorably exercised.

In the instant application, it is not disputed that Bills of Costs/ Taxation Cause No. 09 of 2022 arising from Land Case No. 5 of 2020. It again not disputed that the said Taxation Cause was struck out on 21/06/2022 in the presence of Mr. Sinare Zaharan, learned advocate who appeared for the applicant and Mr. Peter Matete, who appeared for the respondent.

In that premise, the period from 21/06/2022 backwards, as conceded by both parties, constitutes what is known as technical delay, developed by case law from **Fortunatus Masha v. William Shija and Another** [1997] TLR 154.

Considering that the instant application was filed on 29/06/2022; it is apparent that there was a delay of 8 days as also admitted by the applicant's advocate. As correctly submitted by Mr. Mulokozi, learned Advocate, the law is settled that the applicant needs to account for every day of delay for the court to exercise its discretion in extending time. See the case of **Hassan Bushiri versus Latifa Iukio Mashayo**, CAT Civil Application No. 3 of 2007 (Unreported). The Court of Appeal in the recent case of **The Registered Trustees of Bakwata versus The Registered Trustees of Dodoma General Muslim Association**, Civil Application No. 512/03 of 2019 stressed that the applicant must account for every day of delay for the court to grant extension of time. The same principle is reflected in the case of **Dar es Salaam City Council versus Group Security Co. Ltd**, Civil Application No. 234 of 2015 (CAT at Dar es Salaam), where it was stated that:

*"...the stance which this Court has consistently taken is that an application for extension of time, **the applicant has to account for every day of the delay.**"*

In the present application, the learned counsel for applicant urged the court to be guided by the decision of the Court of Appeal in the case of **Victor Rweyemamu Binamungu versus Geoffrey Kabaka** (Supra) where a single Justice granted extension of time to the applicant who delayed for seven (7) days.

However, it should not be forgotten that it is mundane law that each case has to be decided in accordance with its circumstances. In the instant matter, the issue is not whether the delay was inordinate or not but whether the applicant has accounted for every day of the delay.

It is trite that in application proceedings, the affidavits constitute not only the pleadings but also the evidence. Equally straight that the applicant must make out his case in his founding affidavit and that he must stand or fall by the allegations contained therein. It follows therefore that the applicant must set out sufficient facts in his founding affidavit which will entitle him to the relief sought. Going through the paragraph 1-8 of the affidavit and paragraph 1-3 of the supplementary affidavit supporting this application, there is no single paragraph which states what the applicant was doing in those eight (8) days of delay. In other words, no reasons stated therein explaining the delay of (8) days. Moreover, in his submission, the learned advocate for the applicant, instead of submitting on what the applicant was doing in those eight (8) days of delay, he just stated that the delay was not inordinate. However, guided by the principles

stated in the cases above, the applicant was required to account for every day of delay to move this court to extend time.

In the event, and for the foregoing reasons, it is my considered view that no good or sufficient cause has been shown by the applicant to warrant extension of time sought. Consequently, this application is dismissed with costs.

Dated at Bukoba this 10th day of November; 2022




E. L. NGIGWANA

JUDGE

09/11/2022

Ruling delivered this 10th day of November, 2022 in the presence of the Mr. Peter Matete, learned advocate for the respondent Hon. E. M. Kamaleki, Judge's Law Assistant and Ms. Sophia Fimbo B/C, but in the absence of the applicant's advocate.




E. L. NGIGWANA

JUDGE

10/11/2022