

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(ARUSHA SUB-REGISTRY)
AT ARUSHA**

MISC. CIVIL APPLICATION NO. 1 OF 2022

(C/f High Court of Tanzania in Civil Appeal No. 13 of 2018; Originating from the Resident Magistrates' Court of Arusha in Civil Case No. 2 of 2017)

SUNNY AUTO WORKS APPLICANT

Versus

SULEMAN NCHAMBI RESPONDENT

RULING

12th October & 16th December 2022

Masara, J.

The Applicant preferred this Application under Order 8(1) of the Advocates Remuneration Order, G.N No. 264 of 2015, praying to be granted an extension of time to file an Application for Bill of Costs in respect of the decision of this Court (Mzuna, J.) in Civil Appeal No. 13 of 2018, which was made on 16/08/2019. The Application is supported by the affidavit deposed by Ayub A. H. Suleman, principal officer of the Applicant. The Application was uncontested as the Respondent did not file a counter affidavit.

The Respondent, for unknown reasons, defaulted appearance since the Application was filed despite being dully served. On 12/10/2022, when the Application came up for hearing, it was resolved that the Application

be heard *ex parte*, through filing of written submissions. At the hearing, the Applicant was represented by Dr E. E. K. Mjema, learned advocate.

As a background, the Applicant successfully sued the Respondent in the Resident Magistrates' Court of Arusha (hereinafter "the trial court"), claiming for TZS 35,000,000/= due to him for services of five motor vehicles belonging to the Respondent. After a hearing, the trial court was satisfied that the claim was proved to the required standard. The Respondent was ordered to pay TZS 35,000,000/= as special damages and TZS 5,000,000/= as general damages.

The Respondent was aggrieved by that decision. He appealed to this Court vide Civil Appeal No. 13 of 2018. This Court dismissed the appeal with costs, upholding the trial court's decision. In addition, this Court overturned the order to pay general damages, after finding that there was no evidence to justify the payments. The Respondent, in addition to payment of the decretal sum, was ordered to pay interest on the decretal amount at the rate of 7% per annum from the date of the trial court judgment till final satisfaction of the decree. That decision as well aggrieved the Respondent.

The Respondent initiated the appeal process by filing a notice of appeal to the Court of Appeal. He also applied for leave to appeal to the Court of Appeal vide Misc. Civil Application No. 89 of 2019. Leave was granted in a ruling delivered on 06/08/2021 (Robert, J.). Nothing ensued thereafter. The Applicant intended to file Application for Bill of Costs but was blocked by the appeal processes initiated by the Applicant. When the appeal stalled, the Applicant preferred this Application seeking for extension of time to file the application for Bill of Costs.

Submitting in support of the Application, Dr Mjema argued that the Applicant would have filed the Application for Bill of Costs on time but could not do so because, four days after the judgment was delivered, the Respondent filed a Notice of Appeal initiating the appeal processes to the Court of Appeal. The Applicant also applied for leave to appeal and leave was granted on 06/08/2021. It was his further submission that when the Applicant realised that the period of appealing to the Court of Appeal had lapsed, he preferred this Application to enable him to file an application for Bill of Costs, since the Respondent failed to take steps in pursuit of his intended appeal.

It was Dr Mjema's further contention that grant of extension of time is upon a party showing good cause, relying on the case of **Lawrent Simon**

Assenga vs Joseph Magaso & 2 Others, Civil Application No. 50

of 2016 (unreported). In his view, good cause had been exhibited by the Applicant. He urged the Court to allow the Application.

I have arduously considered the affidavit in support of the Application, the annexes thereto and the submission by Counsel for the Applicant. The issue for determination is whether the Applicant has furnished sufficient cause to warrant him extension of time sought.

Although the Application was not contested, that does not suggest that it ought to be granted as of right. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. Addressing what amounts to sufficient cause, the Court of Appeal in the case of **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another, Civil Application No. 6 of 2001**

(unreported), had this to say:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant."

The question is whether the Applicant in this Application can be covered by sufficient cause circumstances above explained. In both the affidavit in support of the Application and the submission by the Applicant's counsel, the reason behind the delay is that the Respondent initiated the appeal processes by filing Notice of Appeal and sought leave which was granted.

Undoubtedly, the Applicant could not file an application for Bill of Costs while the Respondent had initiated the appeal processes to challenge the decree issued in his favour. The record shows that the judgment of this Court was delivered on 16/08/2019. The record further shows that the Respondent filed a Notice of Appeal to the Court of Appeal against that decision on 26/08/2019. To manifest his intention to appeal, the Respondent applied for leave to appeal to the Court of Appeal as condition precedent to appeal to the Court of Appeal. Leave was granted by this Court on 06/08/2021. However, according to Applicant's Counsel, the Respondent did not take any steps to have his appeal filed, prompting this application which was filed on 04/01/2022.

In my firm view, the above set of facts amounts to sufficient cause. The Applicant was barred to file an application for Bill of Costs because the Respondent initiated the appeal processes. I entirely agree with Dr Mjema

that the costs could not be determined while the Respondent initiated the appeal processes. In view of the above, the Applicant's delay to file Application for Bill of Costs was due to sufficient cause.

Consequently, sufficient cause for the delay has been exhibited by the Applicant to enable this Court to grant the extension of time sought. The Application is therefore granted. The Applicant to file the Application for Bill of Costs within 30 days from the day of this ruling. Since this Application was uncontested, each party shall bear their own costs.

Order accordingly.




Y. B. Masara

JUDGE

16th December 2022