

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 214 OF 2022

DUNSTAN NOVAT RUTAGERUKA APPLICANT

VERSUS

JAMES MAKUNDI RESPONDENT

**PERMANENT SECRETARY, MINISTRY OF
LANDS, HOUSING AND HUMAN SETTLEMENTS**

DEVELOPMENT 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

(Arising from the decision of this Court in Land Case No. 80 of 2015)

RULING

11th November & 14th December, 2022

KISANYA, J.:

The applicant is moving the Court under section 14(1) of the Law of Limitation Act, Cap. 89, R.E. 2019 (the LLA). He is seeking for an order of extension of time to file bill of costs against the 1st Respondent, in respect of the decision of this Court in Land Case No. 80 of 2015, dated 22nd September, 2020. The application is supported by an affidavit of his advocate one, Mr. Erasmus Denis Buberwa from Kazi Attorneys.

For an easy appreciation of the facts which led the applicant to file this application, a brief background is necessary. It is as follows. The 1st respondent sued the applicant and 2nd and 3rd respondent in Civil Case No. 80 of 2015. On 22nd September, 2020 this Court (Kulita, J) decided the suit in favour of the applicant. The 1st respondent was, among others, ordered to pay costs of the case. That decision aggrieved the 1st respondent. He filed a notice of appeal on 8th October, 2020. He also lodged an appeal which was registered as Civil Appeal No. 181 of 2022. On 28th April, 2022, the Court of Appeal dismissed the 1st respondent's appeal with costs.

On the foregoing, the applicant filed the present application for extension of time to file bill of costs. The reasons for extension are defected in paragraph 7 of the supporting affidavit as follows:

"The time to file the said Bill of Costs by then in 2020 was prevented by presence of the Notice of Appeal which snag does not anymore exist after the determination of the said appeal by the Highest Court of the land."

The 1st respondent filed a counter affidavit in which he contested the application. He stated to have filed an application for extension of time to file review against the decision of the Court of Appeal.

When this application was called on for hearing, the applicant was represented by Mr. Erasmus Buberwa, learned advocate, the 1st respondent appeared in person, while the 2nd and 3rd respondents were represented by Ms. Debora Mcharo, learned State Attorney.

Submitting in support of the application, Mr. Buberwa adopted the supporting affidavit to form part of his submission. He contended that the applicant failed to file bill of costs in respect Land Case No. 80 of 2015 due to the notice of appeal. Making reference to the case of **Aero Helicopter** [1990] TLR 142, he submitted that this Court had no mandate to determine the application after the 1st respondent had filed the notice of appeal. He therefore urged this Court to grant the application.

Responding, the 1st respondent objected the application on the ground that he had lodged an application for extension of time to file review of the decision of the Court of Appeal. On her part, Ms. Mcharo had nothing to respond.

When Mr. Buberwa rose to rejoin, he submitted that there is no order for stay of the proceedings at hand.

It may be observed that, in terms of section 14(1) of the LLA, it is the judicial discretion of the Court to either grant or to refuse to grant an application for extension of time. For the Court to exercise its discretion, the applicant has to place material and considerations which constitute reasonable and sufficient cause. The relevant section 14(1) of the LLA reads:-

*"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."*

It is worth noting here that, according to rule 4 of the Advocates Remuneration Order, 2015, the judgment debtor is enjoined to file the bill of costs within sixty days from the order awarding costs. Given that the judgment awarding the costs in favor of the applicant was delivered on 22nd September, 2020, the applicant would have filed the bill of costs on or before 21st November, 2020. Now, main task is to examine whether reasonable or sufficient cause for the delay has been shown.

As it can be glanced from the supporting affidavit, the reason advanced by the applicants is based on the common ground that, before expiration of the

time within which the applicant was enjoined to file bill of costs, the 1st respondent lodged a notice of appeal to the Court of Appeal. In view of the settled law, the said notice of appeal commenced the proceedings in the Court of Appeal. On that account, I agree with Mr. Buberwa, this Court was excused from determining the application for bill of costs as held in **Aero Helicopter** (supra)

It is not disputed that the appeal by the 1st respondent was terminated in favour of the applicant and the 2nd and 3rd respondents on 28th April, 2022. Further to this, the record bears it out that this application was filed on 24th May, 2022.

In the light of the foregoing, it is clear that the delay was caused by the presence of appeal against the judgment subject to this application. Borrowing a leave from the provisions of section 21(1) of the LLA, I am of the view that the time during which the applicant prosecuted the said appeal has been accounted for. The applicant acted with due diligence immediately he was informed of the outcome of his appeal. The fact that the 1st respondent has filed an application for review of the decision of the Court of Appeal is not sufficient ground for rejecting the application. This is also when it is considered that that his application was filed after the applicant had lodged the instant

application. Thus, I am satisfied that the applicant has demonstrated good cause for the delay.

In the upshot, the application is hereby granted by extending the time within which to file the bill of costs. Consequently, it is ordered that the application for bill of costs be lodged within sixty (60) days of the date of this ruling. Given the nature of this case, each party shall bear its own costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 14th day of December, 2022.



S.E. KISANYA
JUDGE