

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPLICATION NO. 110 OF 2021

*(Emanating from Bill of Costs No. 4 of 2020 and Land Reference
No. 6 of 2020 High Court of Tanzania, Mbeya District Registry)*

BENJAMIN MWAKYALA.....APPLICANT

VERSUS

GEOFFREY A. NDALANDA.....RESPONDENT

RULING

Date of last Order: 28.10.2022

Date of Ruling: 19.12.2022

Ebrahim, J.

The applicant has lodged the instant application praying for extension of time under the provisions of **section 14(1) of the Law of Limitation Act, Cap 89 RE 2019**. The application was supported by the affidavit sworn by the applicant, Ignas F. Ngumbi.

Upon being served with a copy of the chamber summons, the respondent filed a counter affidavit disputing the contents of the applicant's affidavit. He contended also that there are no any

illegalities from the decision of the taxing master and that the applicant failed to point out the alleged illegalities.

The respondent further filed a notice of preliminary objection arguing that the application is fatally defective for wrong citation of the enabling provision of the law; and that the application contravenes with **Order 8(1)(2) of the Advocates Remuneration Order, 2015, GN. No. 264 published on 17th July, 2015.**

However, on 28.10.2022, the Respondent prayed to withdraw the raised objection without costs so that the application for extension of time can proceed on merits. The prayer was granted.

In this application, the applicant was represented by advocate Ignas Ngumbi while the respondent appeared in person. The application was scheduled to be argued by way of written submission.

In his submission, the applicant's counsel argued that the delay was not deliberate but technical as soon after the dismissal of Land Reference No. 20/2020 on 02.12.2021 by this court, the applicant promptly filed the instant application on 06.12.2021. He urged this court to be guided by the decision of the Court of

Appeal in the case of **Fortunatus Masha Vs William Shija and Another** [1997] TLR 154 on technical delay.

As for illegality of the decision, advocate Ngumbi argued that under **Order 11(a) of the Advocates Remuneration Order, 2015**, the taxing master is directed to forfeit the fees entitled to the advocate who had failed to appear for taxation but not to dismiss the bill of cost for want of prosecution. He added that under **Order 68 of the Advocates Remuneration Order, 2015**, the taxing master is directed to proceed exparte on none appearance of either one or both parties. He contended therefore that the taxing master had no jurisdiction to dismiss the bill of costs and invited the court to find the line of reasoning on illegality as a ground to extend time in the case of **Principal Secretary Ministry of Defence and National Service Vs Devram P. Valambhia** [1992] TLR 387. He thus prayed for the court to grant extension of time for the applicant to file an application for restoration of Bill of Cost No. 4 of 2020. He prayed for costs to be in the course.

Responding to the arguments by the Counsel for the applicant, respondent while admitting that technical delay is a good ground to grant an order of extension of time, he argued that the

applicant was also negligent in entering appearance in Reference No. 06/2020 before a judge. With respect, I would not consider that line of argument because it is not the subject of the instant application.

Submitting in relation to the instant application, the respondent listed the dates which the applicant did not enter appearance before a taxing master which are 4th February 2020, 13th February, 2020, 13th March, 2020, 26th March 2020, 15th April 2020, 23rd June 2020, 29th July 2020 and 15th October 2020. He challenged the submission by the counsel for the applicant that there is no any illegality in the decision of taxing master and referred the court to the case of **Tamimu Kitambi Vs Raphael Mbalafu**, Miscellaneous Land Application No. 63 of 2020 (HC-Mbeya Unreported) which dismissed an application for restoration for there not being sufficient reasons for none appearance.

In brief rejoinder, counsel for the applicant added on the principle of technical delay that the parameters of technical delay are not limited to the pendency of those matters that has caused the delay, but the fact that it was the pendency of those matters that caused the delay. He added further that the respondent has

cited the case of **Tamimu Kitambi (supra)** pre-maturely because at this stage the applicant is only required to establish reasons for the delay to file an application to set aside the dismissal order and not reasons for his none appearance to the bill of costs. He further reiterated his submission in chief.

I have carefully considered the arguments presented by the counsel for the Applicant. Out-rightly, I agree with the counsel for the applicant that the issue of there being no sufficient reasons for none appearance to warrant restoration of the Bill of Costs has been prematurely raised. So is the reference to the principle set in the cited case of **Tamimu Kitambi (supra)**.

On the issue of technical delay, going by the affidavit of the applicant as well as the sequence of events depicting in the record, it is true that the applicant had promptly filed the instant application after this court dismissed Land Reference No.6 of 2020 on 03.12.2021. This application was filed on 06.12.2021. The reason for dismissal of the Land Reference No. 6 of 2020 is that this court found that the applicant ought to have made an application for restoration of his Bill of Costs after the same has been dismissed for want of prosecution instead of making an application for

reference. Bill of Costs was dismissed by the taxing master on 15.10.2020 and the applicant timely filed Land Reference before this court only to find that he had preferred a wrong forum, hence the dismissal order. As almost one year had already passed between the dismissal order of the Bill of Costs and the dismissal of the Land Reference, the applicant is definitely way out of prescribed time to apply for restoration of his Bill of Cost, thus the instant application. In essence, as correctly argued, the delay is attributed to technical delay after finding himself in a wrong forum as correctly argued by advocate Ngumbi.

The principle "**technical delay**" was described in the case of **Furtunatus Masha vs, William Shija and Another** [1997] TLR 154, in the following words:

"... A distinction should be made between cases involving real or actual delays and those like the present on which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted."

Thus, in law a technical delay is excusable in opportune circumstances and constitutes a sufficient reason for granting the extension of time and it applies where the previously struck

out/dismissed matter had been filed timely but in a wrong forum. Nonetheless, for a party veering to pursue his right but is caught in a web of time limitation, the invoking of technical delay to establish reason for the delay is subject to the fact that the affected party/applicant promptly moves the court upon the striking out/dismissal order being made- **Elly Peter Sanya v. Ester Nelson**, Civil Appeal No. 151 of 2018 CAT at Mbeya (unreported).

In the application at hand, it is undisputed that the applicant had previously filed the Land Reference No. 4/2020 at the prescribed time; and it is also undisputed that the applicant promptly filed the instant application after the said Land Reference was dismissed by this court. His prompt acts, in my settled estimation, justifies the application of the principle of technical delay.

The applicant also argued issue of illegality of the decision of the taxing master. However, I would not embark into that journey as the established principle of technical delay suffice to determine the application.

In that regard, I hereby grant the application. The applicant is availed 30 days (thirty days) from the date of this ruling to file the

intended application for restoration of Bill of Costs No.4 of 2020.

Costs shall be in the main cause.

Ordered accordingly.



Mbeya

19.12.2022

R.A. Ebrahim
JUDGE

Date: 19.12.2022.

Coram: Hon. A.P. Scout, Ag-DR.

Applicant:

For the Applicant: Absent.

Respondent: Present.

B/C: Jenipha Mmasi.

Court: Ruling is delivered in the present of Respondent and, Court Clerk with the absent of the applicant in Chamber Court on 19/12/2022.




A.P. Scout

Ag-Deputy Registrar

19.12.2022