

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM**

MISCELLANEOUS CIVIL APPLICATION NO. 225 OF 2021

(Arising from Civil Cause No. 858 of 2016)

DRTC TRADING CO. LTD.....1st APPLICANT

MARY G. MUSIRA.....2nd APPLICANT

VERSUS

JUMA MASOUD.....RESPONDENT

RULING

9th, & 16th February, 2022

ISMAIL, J.

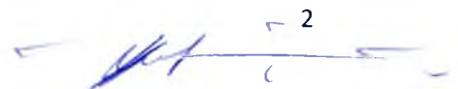
This is a ruling on an application for extension of time that will enable the applicants to institute Bill of Costs for taxation of costs, awarded in Civil Cause No. 858 of 2016. The said costs were awarded in a decision delivered on 4th September, 2020. Reasons justifying the prayer for extension of time are contained in the affidavit sworn by Ida Alex Rugakingira. The deponent's averment is that the delay in filling the taxation matter was caused by the delay in being supplied with copies of a copy of the ruling and drawn order, despite numerous reminders. She contends that when the said decision was finally supplied to the applicants on 19th May 2021, time for filing the taxation matter had long expired.



The application has encountered an opposition from the respondent, who holds the view that, besides failing to account for each day of delay, the applicants appear to blame it on the Court. He interpreted this to be an afterthought that should not be entertained. The respondent further averred that a register, attached as proof of supply of the copy of the decision, would not serve as proof of the date on which the said decision was ready for collection.

Hearing of the application took the form of written submissions by the parties.

Submitting in support of the application, Mr. Evodius Rutabingwa, learned counsel for the applicants, began by citing section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019 which allows a prayer for extension of time. He argued that absence of the copy of the ruling meant that he could not file the bill of costs, the ground being that the said decision is fundamental in the preference of the Bill of Costs. His view was premised on the decision of the Court in ***DRTC Trading Company, Marry G. Musira v. Juma Masoud***, HC-Misc. Civil Application No.278 of 2019 (unreported). He took the view that delays caused by the delay in securing a copy of decision are justified and supportable. On this, he cited the decision of the Court of Appeal in ***Tanzania Revenue Authority v. Yusuph Juma Yusuph***, CAT-Civil Application No2 of 2014 (unreported).

 2

He believed that the delays were not out of negligence or apathetic conduct. He prayed that the application be granted with costs.

The respondent's rebuttal submission, fronted by Mr. Alipo Mwakanyika, learned counsel, was equally formidable. Taking a swipe at the reason for the delay in taking action, the respondent argued that condoning the applicants' sloppiness would be tantamount to opening floodgates of unfounded applications. He wondered how the typing of a six-page ruling would take a whopping nine months to be completed. Learned counsel appeared to suggest that, if the delay was due to delays in furnishing a copy of the ruling, then the Court's Deputy Registrar ought to have sworn or affirmed an affidavit to that effect. This is consistent with the requirements set out in the decision of the Court of Appeal of Tanzania in ***Enock Kalibwani v. Ayoub Ramadhani***, CAT-Civil Application No. 491/17 of 2018 (unreported).

Mr. Mwakanyika further contended that the applicants have failed to account for each day of delay, a requirement accentuated in numerous decisions, including ***Godwin Ndewesi & Another v. Tanzania Audit Corporation***, CAT-Civil Application No. 57 of 1994. He imputed bad faith on the part of the applicants, and that the action taken was a revenge that came with the respondent's decision to institute Execution Application No. 59 of 2019, against the applicants. He took the view that sufficient

cause had not been established to justify the prayer. He prayed that the application be dismissed with costs.

From these rival submissions, the singular question is whether a case has been made out for the grant of extension of time.

It is a well-entrenched position in our legal system, that extension of time, which is a discretionary remedy, is grantable upon laying down a ground for the delay. Such ground is what is known as sufficient or good cause. This position has been restated in a multitude of decisions in this and the apex Court. In ***Nicholaus Mwaipyana v. The Registered Trustees of Little Sisters of Jesus of Tanzania***, CAT-Civil Application No. 535/8 of 2019 (unreported), it was held:

"The power to extend time given under this provision is discretionary, but such discretion must be exercised judicially, meaning the making of a logically sound decision based on rules of the law. That requires the attention of the court to all the relevant factors and materials surrounding any particular case. These factors include the length of the delay, the reason for the delay, and whether or not there is an arguable case, among others."



The stance in the foregoing excerpt was inspired by a half a century's decision encapsulated by the Court of Appeal for East Africa in

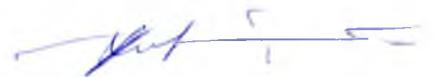
Mbogo v. Shah [1968] EA 93, in which it was held as follows:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

The clear message from both of the excerpts is that a number of factors have to be taken into consideration before the Court's discretion is triggered. The aggregate of these factors is what constitutes sufficient cause.

See also: ***Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women Christian Association of Tanzania***, CAT-Civil Application No. 2 of 2010 (unreported).

It is worth of a note, as well, that in determining whether sufficient cause has been adduced, courts should look at peculiar circumstances of each case, emphasis being drawn to the fact that a liberal interpretation should be employed in determining if the reason adduced constitutes



sufficient cause (See: ***Dephane Parry v. Murray Alexander Carson*** (1963) EA 546).

The reason cited by the applicants in this case is that there were delays in being supplied with copies of the ruling that ordered payment of costs. This implies that filing of the application was dependent on the availability of the ruling that the applicants waited for so long. While it is not my intention to fault the efforts that the applicants employed in chasing a copy of the ruling and drawn order, I take a pose and ask if the said copies are part of the requirements for the filing of the Bill of Costs. This takes me to Order 55 of the Advocates Remuneration and Taxation Orders, GN. 264 of 2015, which provides a checklist of requirements necessary for preference of the Bill of Costs. It provides, in *extenso*, as follows:

"55.-(1) Bills of costs shall show the case and title of the name concerned and shall be prepared in five columns, as follows-

(a) the first or left hand column for dates showing year, month and days;

(b) the second for the number of items;

(c) the third for the particulars of the service charged for;

(d) the fourth for the professional charges; and



(e) the fifth for the taxing officer's deduction.

(2) Disbursements shall be shown separately at the foot of the bill.

(3) Fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion by the taxing officer.

(4) Every bill of costs which shall be lodged for taxation shall be endorsed with the name and address of the advocate by whom it is lodged, and also the name and address of the advocate for whom he is agent."

What comes out clearly is the fact that attachment of a copy of the ruling or a drawn order is not one of the prerequisites, concluding the fact that the long wait for the said documents was not intended to meet any particular legal requirement. Nevertheless, it is quite clear that the Court that would be sat to determine the Bill of Costs would want to be assured that the said costs were awarded. Inevitably, such process would entail going through the ruling and convince the Court that costs were indeed awarded. It would also help to find out if such costs were awarded in whole or in part.

Besides demonstrating that fact to the Taxing Master, the applicants would also need it as their tool in the preparation of the Bill of Costs. The



totality of all this, convinces me that the applicants have presented a plausible case worth of consideration by the Court. In particular, I hold as follows:

- (i) The applicant has accounted for all period of delay. As averred and submitted, the applicants employed several efforts in requesting a copy of the ruling but in vain.
- (ii) The delay in taking action was a fault but that of the Court.
- (iii) The applicants' utmost diligence is evident and open for all to see. The record bears testimony that soon after the decision of 4th September 2020, the applicants did, on 15th and 16th September 2020 write and dispatch letters to the Registrar requesting for copies of the ruling. The applicants maintained their persistence through several other reminders. And upon being furnished on 19th May 2021, the instant application was filed on 01st June 2021, 13 days after.
- (iv) There has been a sufficient reason for delay which is delay caused by the registry in supplying a copy of the ruling for taxation cause preparations.

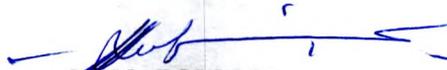
In the upshot, this application is meritorious and I grant it. The applicants are given fourteen (14) days within which to file their Bill of Costs.

Costs to be in the cause.

Order accordingly.



DATED at **DAR ES SALAAM** this 16th day of February, 2022.



M.K. ISMAIL

JUDGE

