

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 38 OF 2021

**(C/F Taxation Cause No. 7 of 2020 of the Resident Magistrate's Court of Arusha at Arusha,
Originating from the Application for Execution No. 50 of 2-17 of the RM's Court Arusha)**

SNOW CREST HOTEL AND WILD LIFE SAFARIS LTD.....APPLICANT

VERSUS

**BONIFACE KAMUGISHA BUBERWA T/A NUTMEG AUCTIONEERS AND
PROPERTY MANAGERS CO. LTDRESPONDENT**

RULING

05/10/2021 & 20/1/2022

GWAE, J

On the 29th March 2021 the Resident Magistrate Court's Court of Arusha gave its verdict in favour of the respondent named herein above by taxing a bill of costs to the tune of Tshs. 10,566,181.83. Seemingly, the applicant was not satisfied with the decision of the RM's court, however she found herself barred with law of limitation in filing a reference to this court. Thus, this application for extension to file an application for reference out of time.

Through an affidavit of one Mollel, the director of the applicant, reasons for delay have been given. They are to the effect that; on the 30th March 2021, the applicant requested for being supplied with copies of drawn order, ruling and proceeding for the purpose of filing an application for reference to the court. The former applicant's letter was followed by the letter dated 22nd April 2021. That, the applicant was supplied with the copy of the ruling on the 13th May 2021 however copies of proceedings and drawn order have not been supplied to date and that, the costs taxed by the taxing officer is injudicious and too excessive.

Resisting this application, the respondent filed his counter affidavit where she stated that, there is no proof establishing that, the applicant did instruct advocate Ngeseyan.

The applicant was represented by Mr. Ngeseyan, the learned counsel whilst the respondent was represented by Mr. Buberwa, the respondent's Managing Director. The parties' representatives sought and obtained leave to dispose of their application by way of written submission. I shall hereinafter thoroughly consider the parties' written submission in the course of determining, whether the applicant has given sufficient cause justifying

this court to grant extension of time as required under provisions of Order 8 (1) and (2) of the Advocates Remuneration Order, 2015

Despite the fact that, grant or refusal of the sought enlargement of time to file an application for reference seems to be a discretion of the court yet the same power should be judiciously exercised (see **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported-CAT). In our instant application, the only reason given in extending the time to file an application for reference is delay in supply of a copy of the ruling and drawn order intended to be challenged to this court allegedly caused by the Resident Magistrate's Court.

Having prudently looked at the parties' affidavits, rival arguments and other documents annexed, I have however observed that, the respondent has, through his written submission, mostly requested this court to determine whether this application is competent or not, and if answered in affirmative, the same be struck out. I am not ready to be moved so since there was no notice of preliminary objection and the order of the court was to the effect that main application be argued by way of written submission. Dealing with the canvassed PO by the respondent at this juncture as it constitutes taking other party into surprise.

Considering the fact that, the applicant was supplied with the copy of the ruling on the 13th May 2021 whereas this application was duly filed on the 25th May 2021, in my view, the last date for filing the intended reference was on the 3rd June 2021, that means the applicant was still within time since the time within which the applicant requested for a copy of drawn order and ruling and the time when he was actually supplied with the same is to be excluded as per section 19 (2) of the Law of Limitation Act, Cap 89 Revised Edition, 2019.


Similarly, if there is any delay, it must be associated with judicial staff and not the applicant. A party should not therefore be punished due to negligence or inaction by the court (See court's decisions in **Domitian Magomba vs. the Esso Tanzania Limited**, Civil Appeal No. 60 of 2001 and **Tanzania Revenue Authority vs. Tango Transport Company Limited**, Civil Application No. 5 of 2006 (both unreported-CAT)).

I have also considered the applicant's assertion that, to date no copy of drawn order that was issued, the fact that has never been objected by the respondent.

Without further ado, in the light of the above explanations this court is of the considered view that, the applicant has accounted for the delay. This application is therefore granted. The applicant is now given **seven (7)** days from the date of this order within which to file an application for reference to the court. Costs of this application shall be in the course.

It is so ordered.




M. R. GWAE
JUDGE
20/1/2022