

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC CIVIL APPLICATION NO.77 OF 2021

*(C/f Land Appeal No.16 of 2019 at the High Court of Tanzania at Arusha and Taxation
Cause No. 83 of 2021 at the High court of Tanzania at Arusha)*

MESHOORI LORAMATU.....APPLICANT

Vs

SAIGURANI LORAMATU..... RESPONDENT

RULING

Date of last Order: 3-3-2022

Date of Ruling: 5-5-2022

B.K.PHILLIP,J

This application is made under Rule 8(1), (2) of the Advocates' Remuneration Order, G.N. No.263 of 2015. The Applicant prays for the following orders;

- i. *Extension of time to file reference application out of time,*
- ii. *Any other order(s) this Honourable court deems just to grant*

Both parties were unrepresented, thus appeared in person. The application was heard by way of written submission as prayed by both parties and the submissions were filed as ordered by the Court.

In his submission, the Applicant submitted that, this Court has discretionary powers to grant orders for extension of time. What is required is that the applicant has to adduce good cause for the delay. He went on submitting that what amounts to good cause is upon the Court's discretion and the same differs from one case to another. To cement his argument he referred this Court to the case of **Jumane Hassan Billingi Vs The Republic, Civil Application No. 23 of 2013** (unreported) in which the Court of Appeal cited the case of **Ms Henry Leonard Maeda and Another Vs Ms. John Anael Mongi and Another, Civil Application No.31 of 2013** (unreported) in which the Court said the following;

"In essence what amounts to a good cause is upon the discretion of the court and it differs from case to case"

The applicant insisted that there are no hard and fast rules on what amounts to good cause. Each case is normally decided on its merits. He cited that case of **Abdalla Salanga and 63 others Vs Tanzania Harbours Authority , Civil Application No. 4 of 2001**(unreported),to bolster his argument.

It was the Applicant's submission that he was sick that is why he failed to file the application for reference in time. He contended that he has neither being negligent nor sat on his rights and has always been obedient. He implored this Court to grant the order for extension of time sought in this application.

In rebuttal the Respondent submitted that the ruling, the subject of this application was delivered on the 27th August 2021 in the presence of both Parties, that is the Applicant and the Respondent. The Applicant was obliged to collect the copy of the ruling as soon as it was delivered. Furthermore, he submitted that the Applicant failed to account for the whole period of delay, which is more than ten days. To cement his arguments he cited the case of **Bushiri Hassan Vs Latifa Lukio Mashayo, Civil Application No. 03 of 2007** (unreported) in which the Court of Appeal held that;

"Delay of even a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within certain steps have to be taken"

The Respondent concluded his submission by insisting that the Applicant has failed to account for the whole period of delay and has not adduced good cause for the delay to move this Court to grant the orders sought in this application. There was no rejoinder submission by the Applicant.

From the foregoing, the issue for determination by this Court is whether the Applicant has adduced good cause and sufficiently accounted for the days of delay.

It is not in dispute that the provision of section **8(1) of the Advocates' Remunerations order, GN No.263 of 2015** confers powers to this Court to grant orders for extension of time for filing an application for reference provided that the Applicant adduces sufficient cause for the delay. As correctively submitted by the Applicant, there are no hard and

fast rules on what amounts to good cause, but our Courts have lied down some factors which are normally taken into consideration in determination on whether the reasons adduced by the Applicant are good causes for the delay. The following are among the factors established by our Courts;

- i. The Applicant must account for all the period of delay.
- ii. The delay should not be inordinate.
- iii. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

[See the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 02 of 2010**, (unreported)].

It is clear on records that, the Taxing Master delivered her Ruling on 27th August 2021. The provisions of Section 7(2) of the Advocates' remunerations Order, G.N. No.263 of 2015 provides that a reference from the decision of the Taxing Master has to be made within twenty one (21) days from the date of the decision. Thus, the applicant was supposed to file his application for revision on or before 16th of September 2021. It is on record that this application was filed in this Court on 29th September 2021. The main reason adduced by the applicant for the delay in filing his reference from the decision of the Taxing Master is sickness. I wish to state here that when sickness is alleged as a reason

for delay, then , the same has to be proved or sufficient explanations have to be given to convince that Court that the applicant was really sick. In the explanations for the sickness the applicant is supposed to state the dates and days in which he was sick and date of recovery. This Court in the case of **Juto Ally Vs Lucas Komba and Aloyce Msafiri, Civil application No 484/17 of 2019**, (HC) (unreported) said the following;

Sickness could amount to a good cause for extension of time, but it is subject to proof by accounting for all days of delay alleged to be the period of sickness.

In the instant application the applicant has not produced any medical report in support of his allegedly sickness. Not only that, the applicant has not disclosed the period within which he was sick. He has not stated the date he fell sick and date of his recovery. Under the circumstances this Court fails to relate the days of delay to the alleged sickness. Thus, it is the finding of this Court that the applicant has failed to account for each day of delay as required by the law.

The Applicant's second ground for the extension of time as stated in the affidavit in support of this application is that the certified copy of the ruling in respect of the bill of Costs, the subject of this application was issued to him belatedly. This ground is also devoid of merits. As correctly submitted by the applicant, the ruling was delivered on 27th August 2021 in presence of both parties and was signed on the same date. Thus, it was

ready for collection by the parties on that very day, that is, 27th August 2021. Not only that, the applicant has not stated the date on which he was supplied with the copy of the ruling.

In the upshot, the applicant has failed to adduce good cause for this Court to exercise its discretion in his favour. Thus, I hereby dismiss this application with costs. It is so ordered.

Dated this 5th day of May 2022




B.K.PHILLIP

JUDGE.