

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOBA DISTRICT REGISTRY**

AT BUKOBA

MISC. CIVIL APPLICATION NO. 55 OF 2021

(Arising from the Order from Taxation Cause 13 of 2019 before Hon. J.M. Minde Originating from Misc. Land Appeal No. 61 of 2019))

AMADA KHALFAN AND 2 OTHERS..... APPLICANTS

VRS

IBRAHIM MAHYORO..... RESPONDENT

RULING

02/02/2022 & 11/03/2022

NGIGWANA, J.

This is an application for extension of time within which to lodge reference out of time against the order of the Taxing Officer in Taxation Cause No. 13 of 2019. The application is by way of chamber summons made under Order 8 (1) and (2) of the Advocates Remuneration Order, 2015 G.N. No. 263 of 2015, and supported by an affidavit duly sworn by the first applicant for and on behalf of the 2nd and 3rd applicants. Upon being served with the chamber summons, the respondent filed the counter affidavit contesting the application.

A brief background of this matter is to the effect that; the case started at Nshamba Ward Tribunal, Civil Case No. 25 of 2011 in which the applicant, now respondent; Ibrahim Mahyoro sued the respondents, now applicants

for encroaching into his piece of land in execution of decree in Civil case No. 2 of 1988.

The matter ended in favor of the applicants, and were awarded costs. The respondent, Ibrahim Mahyoro was aggrieved by the decision of the Ward Tribunal, hence lodged appeal to the District Land and Housing Tribunal for Kagera at Bukoba, Appeal No. 304 of 2011. The matter ended in his favor, and was awarded costs.

The applicants were aggrieved by the decision of the DLHT; thus, lodged appeal to the High Court, Misc. Land Appeal No. 09 of 2013. After hearing the parties, the appeal ended in the applicants' favor and were awarded costs in this court and the tribunals below.

The respondent, Ibrahim Mahyoro was aggrieved by the decision of this court (Mwangesi, J. as he then was) dated 16/06/2016 but filed no application for leave to lodge appeal to the Court of appeal for certification on point of law within the prescribed time. As a result, he filed an application for extension of time (**Application No. 61 of 2019**) for filing an application for certification on points of law so as to Appeal to the Court of Appeal of Tanzania against the decision of this court. At last, the court (Mtulya, J.) found no sufficient cause demonstrated by the applicant, now respondent, to warrant grant of the extension of time. Consequently, the application was dismissed with costs.

It is from that angle that applicants filed taxation cause for costs incurred in prosecuting Misc. Land Case Application No. 61 of 2019. The matter was

registered as Taxation Cause No. 13 of 2019. The matter was objected by the respondent on the ground that it was time barred. The objection was argued and finally sustained. Consequently, the application was struck out with costs hence this application for extension of time so that the applicants can file reference to this court to challenge the decision of the Taxing Officer.

When the matter came for hearing, the applicants appeared in person and unrepresented while the respondent was represented by Ms. Joanitha Jonathan learned advocate. Arguing in support of the application, the Applicants after adopting an affidavit sworn by the 1st applicant to form part of their submission, submitted that the ruling in Taxation Cause No.13 of 2019 was delivered by the Taxing Officer in their absence, but in the course of making follow-ups, they were told that the ruling was delivered on 22/06/2021. That the copy which was supplied to them does not show the month in which the ruling was delivered, and whether the same was delivered in the presence of the parties to the case. It is their submission that the intended reference has overwhelming chances of success because it was filed within the prescribed time.

On the other hand, Ms. Joanitha submitted that the applicants have not demonstrated sufficient cause to warrant the grant of this application. She further submitted that, on 08/06/2021 the applicants were in court and the ruling date was scheduled in their presence to wit; 22/06/2021 whereas, on that date, the respondent entered appearance but the applicants did not, and no reasons assigned or notice of absence filed. She added that

the applicants have not accounted for each day of delay. She made reference to the case of **Ramadhani .J. Kihwani versus Tazara**, Civil Application No. 401/18 of 2018 CAT (unreported).

In their brief rejoinder, the applicants stated that, they entered appearance on the 22/06/2021 but no ruling was delivered on that date and were not called to appear before the Taxing Officer for the whole day.

Having heard the submissions for and against the application the issue for determination is whether the applicants have demonstrated sufficient cause to warrant grant of extension of time.

It is now a principle of law deeply rooted in our jurisprudence that for the court to be able to exercise its discretion to grant extension of time, the applicant must demonstrate good or sufficient cause for the delay. See **Lyamuya Construction Company Ltd versus Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil application No. 2 of 2010 CAT (unreported). The application at hand was brought under Order 8(1) of the Advocates Remuneration Order, 2015 which provides that;

*"The High Court may, subject to order 7 **extend the time for filing reference upon sufficient cause**". (Emphasis added)*

Paragraph 12 of the affidavit in support of the application is to the effect that the applicants delay to file reference was not due to their negligence but was occasioned by the conduct of the court itself taking into consideration of the missing of the exact month in which the court

delivered its ruling which would have enabled the parties to take the right action against the order delivered by the Taxing Officer.

It is also trite that what constitute sufficient cause or reason to warrant extension of time in a civil case cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. The Court of Appeal the case of **Regional Manager Tanroad Kagera versus Ruaha Concrete Company Ltd**, Civil application No. 96 of 2007 CAT (unreported) held that;

"The test for determining an application for extension of time is whether the applicant has established some material amounting sufficient or good cause as to why the sought application is to be granted.

The applicants complained ruling of the court was delivered in their absence, while the other hand, the respondent's counsel admitted that the applicants were not present but the respondent was present.

I went through the court record and found that on 09/06/2021, no party entered appearance. Let the record speak to or itself;

"Coram Hon. Massesa Ag DR

D/Holder – Absent

Judgment Debtor- Absent.

Order: Ruling on 22/06/2021".

Moreover, the handwritten proceedings are silent as to whether the ruling was really delivered on 22/06/2021, and if yes, whether it was delivered in the presence of any of the parties. The typed ruling does not reveal when exactly the ruling was delivered, and whether it was ever delivered in the

presence of the parties to the case. Under the circumstances, it cannot be said that the court has discharged its role properly to enable the parties to the case to take appropriate steps depending on the outcome of the case.

The applicants also argued that, that the intended reference has overwhelming chances of success. Order 4 of the Advocates Remuneration Order, 2915 provides that;

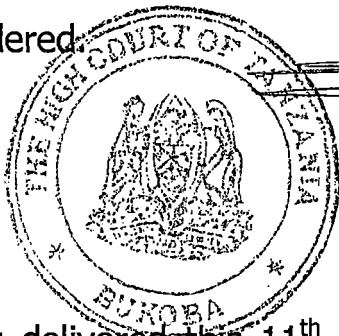
*"A decree- holder may within **sixty days from the date of an order awarding costs lodge an application for taxation by filing a bill of costs**".*


In the matter at hand, it is trite that Misc. Land Case Application was handed down on 08/05/2019. The day of filing Taxation Cause was lapsing on 07/07/2021, **Sunday but also Sabasaba Day**. Filing fee was duly paid on **08/07/2019**.

It should be noted that public holidays are not excluded in computing periods for limitation purposes, unless a public holiday coincides with the last day of the period in question, which case the next following working day is counted as the last day to file the relevant proceedings in court. I have also considered the position that, if filing fee is required to be paid, then, the date of filing is the date of paying the required fees. **See John Chuwa versus Anthony Chiza [1992] TLR 233, Matoto Matoto versus Makuru Irega**, Misc. Land Appeal No.8 of 2021 HC-Musoma (Unreported) and **Mustapha Boay Akunaay versus Mosses Meimar Laizer (Legal Administrator of Lucia Letroviki Laizer)**, Land Reference No.06 of 2020 HC-Arusha (Unreported) In Taxation Cause No.

13 of 2019, the filing fee was paid on 8/07/2019, that is to say the next following working day after "**Sabasaba Day**".


In the final analysis, taking into account what transpired in the court proceedings in relation to the delivery of the court ruling, and the fact the intended reference has overwhelming chances of success, I am convinced that, it is right and in the interest of justice to exercise the discretion of this court to grant extension of time. In the event, the application is hereby granted and the applicants are given 14 days within which to file the intended reference. Since Today is Friday and the applicants are laypersons, the said days shall start run from Monday; **14/03/2022**. It is so ordered.




E. L. NGIGWANA
JUDGE
11/03/2022

Ruling delivered this 11th day of March, 2022 in the presence of the 2nd applicant in person, E. M. Kamaleki, Judges' Law Assistant, Ms. Tumaini Hamidu, B/C but in the absence of the respondent, 1st & 3rd applicants.




E. L. NGIGWANA
JUDGE
11/03/2022