

**IN THE HIGH COURT OF TANZANIA**  
**(IN THE DISTRICT REGISTRY)**  
**AT MWANZA**

**MISC. CIVIL APPLICATION No. 150 OF 2021**  
*(Arising from the High Court PC. Civil Appeal No.57 of 2020)*

**NZENGO BEZEGWE ----- APPLICANT**

**VERSUS**

**MATUI NAHONGE ----- RESPONDENT**

**RULING**

*Last Order date: 25.03.2022*

*Ruling Date: 31.03.2022*

**M. MNYUKWA, J.**

The applicant by the way of chamber summons moved this court under section 14(1) of the Law of Limitation Act Cap 89 RE: 2019, seeking for the following orders;

- 1. That, this Honorable court be pleased to grant an order for leave to file out of time an application for taxation (bill of cost).*
- 2. THAT, the cost(s) be provided for.*



*3. Any other/further relief(s) as this honourable court may deem fit and just to grant.*

The application is supported by an affidavit sworn by ROZA ROKI who deponed to be the chairperson and principal officer of the applicant.

The brief facts that gave rise to this application are that the applicant instituted a Civil Case No. 8/2017 against the respondent before Bukindo Primary Court claiming the return of utensils owned by the applicant. The applicant was pronounced to be the winner and the respondent was ordered to return the utensils with immediate effect from the date of the judgment. Dissatisfied, the respondent successfully appealed to the District Court of Ukerewe vide Civil Appeal No. 4 of 2017, where the Primary Court decision was reversed. The Applicant was not pleased and appealed to the High Court where the case was heard before Hon. Mahimbali SRM (as he then was) with Extended Jurisdiction in PC. Civil Appeal Case No. 08 of 2019. The High court reversed the 1<sup>st</sup> appellate court decision and restored the decision of the trial court.

After the applicant was pronounced a winner and awarded costs of the suit by the High Court, she went back and filed an application for a bill of costs vide case number 8 of 2017. Bukindo Primary Court ordered the applicant to be paid a sum of 2,187,000/= which includes 1,129,000/= as a bill of costs and 1,058,000/= being costs for the claimed utensils.

The respondent did not see justice from that decision and decided to appeal to the District Court of Ukerewe through Civil Appeal No. 27 of 2021. The District Court allowed the appeal on the ground that Bukindo Primary Court had no jurisdiction over the matter as the proper court was the High Court which granted the costs. The applicant realizing that she is out of time has now brought this application seeking court's leave to file a bill of cost out of time.

The application was argued by way of written submission as prayed by the respondent and granted by the court. The applicant was represented by Maligisa Sakila, learned counsel while the respondent appeared in person unrepresented.

The applicant through his learned counsel was the first to submit. He narrated the genesis of the matter to this present application after the decision of this court on 03.04.2020, they filed the taxation proceedings before Bukindo Primary Court. The taxation application in civil Case No 08 of 2020, its decision was delivered on 30.08.2021 in favour of the applicant and the respondent appealed against the judgment in the District Court of Ukerewe in Civil Application No. 27 of 2021. He further stated that the court on 04 November 2021, allow the appeal, quash and set aside the decision of the trial court for the want of jurisdiction.



It was further revealed that, from the date the judgment was delivered, they were informed that the application for taxation could be filed to the HC. He avers that parties could not properly communicate to their advocate and in the mid of the event they felt the sudden death of their three members. He insisted that the delay was attributed to the administrative structure of the Bukindo Primary Court for not having a permanent residing magistrate and communication between the parties and their advocate and the sudden death of three persons.

Citing section 21(1) of the law of Limitation Act, he avers that a bonafide prosecution of a case to the court with no jurisdiction has been taken as an excuse and ground for extension of time. He, therefore, prays for the application to be allowed insisting that the applicant has demonstrated good cause for delay and has been able to account for each day of delay.

Responding, the respondent denied that the applicant did not give sufficient reasons for the extension of time and he sleep on his rights to file the application in the Resident Magistrate of Mwanza with extended jurisdiction within time. He went on that the application was filed on 02.08.2021 after the lapse of 485 days and not the date stated by the applicant while the date for filing the bill of costs as stated is 60 days in



accordance with rule 4 of the Advocate Remuneration Order GN no. 264 of 2015.

Reacting to the reason that there (3) members of the applicant died, he avers that the same is an afterthought for the death occurred while the applicant was already barred for he was out of time for 485 days and that reason can not be used by the applicant to justify his delay.

Referring to the case of **Hassan Kilala vs Juma Sandu** (1994) TLR 87, he insisted that the allegation that the proceedings in the primary court were stayed and was not proper for the same court had no jurisdiction.

He finally insisted that the death of members of the applicant on 22.11.2021, their burial and the lack of communication with his advocate are not sufficient reasons to grant this application and he therefore, prays this court to struck out the application with costs.

After the rival submissions from the parties, I proceed to determine the application having in mind that this court is empowered to exercise its unfettered discretion to extend the time to the applicants where the statutory limited time expires (See **Nyabazere Gora vs Charles Buya**, Civil Appeal no. 164 of 2016). Though empowered, this court has to exercise its discretional powers cautiously assessing the reasons for the



delay. Among factors for the court to consider in the determination of the application for extension of time were stated in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Christian of Tanzania**, Civil Application No. 2 of 2010 (unreported), it was observed that in answering the issue, the Court should be guided by the following factors:

- " 1. *The applicant must account for all the periods of delay;*
2. *The delay should not be inordinate;*
3. *The applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take;*
4. *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged".*

Applying the essence of the above-mentioned cited decisions, in the instant matter, the impugned judgment was delivered on 03.04.2020 before this court by the SRM in the exercise of extended jurisdiction to which the application for taxation was to be filed before this court within 60 days in terms of rule 4 of the Advocate Remuneration Order GN no. 264 of 2015.



On records, this instant application was filed before this court as it appears on 29.11.2021 which on calculation is approximately 20 months after the decision which makes the applicant delay to be 18 months. The applicant gave reasons that he was not informed and technically, he referred the application to the primary court which decided the matter and on appeal, the district court nullified the matter for want of jurisdiction.

In reference to the records, it is reflected that the applicant once filled the taxation application before Bukindo Primary Court till the matter was decided by the District Court that the application was wrongly filed on 04.11.2021.

I agree with the applicant's learned counsel that the law provides for exclusion of the time when the matter proceeded in the court with no jurisdiction. The law under sections 21 (2) of the Law of Limitation Cap. 89 RE: 2019 provides that:-

*21 (2) "In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court*



*which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it".*

Therefore, as according to the law, I proceed to exclude the time from the date the matter was decided as from 03.04.2020 to the date the applicant was aware that he should approach this court. In that essence, I proceed to subject the evidence in the record as from 04.11.2021 to the date the application was filed in this court that's on 29.11.2021.

The applicant averred that after the matter was decided by the District Court, three (3) of his members died and were not able to communicate to their former advocate. The applicant insisted that he managed to state good reasons for this court to grant the application. The assertion were denied by the respondent who insisted that the applicant slept on his rights. As stated in the case of **Oswald Masatu Mwizarubi vs Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) that:-

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."*





From the point of view, and after this court has deducted the time the applicant was prosecuting the matter in Bukindo Primary Court and Ukerewe District Court respectively, the applicant has to account for 25 days of delay from the date the matter was decided by the Ukerewe District Court that's on 04.11.2021 to the date the matter was filed before this court that on 29.11.2021. Going to the applicant's affidavit, specifically on para 7,8,9 and 10, the reasons fronted did not account for the delay of the applicant and the principle is clear that failure to account for every day of delay deters this application to be granted.

Since the law is settled as it was stated in the **Lyamuya case** (Supra) and **Ngao Godwin Losero vs Julius Mwarabu** Civil Application No. 10 of 2015, I find that the applicant failed to account for every day of delay for this application to be granted.

In the upshot, the applicant's application is dismissed. No order as to costs.



**M. MNYUKWA**  
**JUDGE**  
**31/03/2022**

Ruling delivered on 31.03.2022 in presence of both parties.

**M. MNYUKWA**  
**JUDGE**  
**31/03/2022**