

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB REGISTRY)
AT MOROGORO

CIVIL APPEAL NO. 77 OF 2021

ZAKARIA RASHIDI MALIKA APPELLANT

VERSUS

HITAMI SEIF OMAR RESPONDENT

(Being appeal form the decision of the Kilombero District Court)

(Hon. L.O. Khamsini, SRM.)

dated the 15th day of February, 2021

in

Misc. Civil Application No. 42 of 2020

JUDGMENT OF THE COURT

Date of Last Order: 25/02/2022 &
Date of Judgment: 04/03/2022

S.M. KALUNDE, J.:

In this the appellant, ZAKARIA RASHIDI MALIKA, is challenging the decision of the District Court of Kilombero sitting at Ifakara (henceforth "the court") in **Misc. Civil Application No. 42 of 2020** (henceforth "the application") which granted the respondent an extension of time withing which to lodge a Bill of Cost relating to **Civil Case No. 7 of 2018**. The brief facts as may be gathered from the pleadings are that; through **Civil Case No. 7 of 2018** the respondent successfully sued the appellant before the trial court. The

decision of the trial court was delivered on 18th March, 2019. Being out of time and intending to file a Bill of Cost, the appellant (decree holder in Civil Case No. 7 of 2018) lodged the application, at the trial court, seeking to extend time to file a Bill of Cost.

At the conclusion of the hearing of the application the trial court was convinced that the respondent and applicant then had sufficiently demonstrated good cause. Consequently, the application was granted. The respondent was granted fourteen (14) days within which to file Bill of Cost. It is this decision which enraged the appellant, he had preferred the present appeal which is predicated on two grounds: **one**, that the learned trial magistrate erred in extending time without there be sufficient grounds; and **two**, that the learned trial magistrate erred in extending time when the respondent failed to account for every day of the delay.

Following an invitation by the counsel for the appellant, which was seconded by the respondent's counsel, the appeal was argued by way of written submissions. It is on record that submissions of the appellant were drafted and filed by **Mr. Bwire Benson Kuboja**, learned counsel. On his part, the respondent retained the services of




learned counsel **Mr. Theophilus Theonest** in preparing their response. I thank the counsels for their industrious submissions which formed the basis of the present judgment.

I have carefully gone through the records as well as the submissions for and against the appeal, I am settled that the question for my determination is whether the present appeal is merited or simply whether the trial court was correct in granting the application for extension of time.

However, before delving into the merits I propose to start with the substance of the application at the trial court. The application at the trial court was preferred by way of Chamber Summons under section 14 of **the Law of Limitation Act, Cap. 89 R.E. 2019** ("the LLA"). In the application the respondent had two main prayers:

- 1. That the trial court be pleased to grant extension of time to the Decree Holder within which to file an Application for Bill of Cost; and*
- 2. That the intended Application for Cost annexed hereto be deemed as dully filed.*

Together with the chamber summons, the application was supported by an affidavit affirmed by the respondent. In accordance 

with the affidavit the applicant contended that the delay in lodging the application was occasioned by a rejection to be registered by the civil registry officer at the trial court. For ease of reference below is the substance contained in the affidavit:

"1. That I am the applicant herein and hence conversant with the facts of this Application.

2. That I was the Plaintiff in Civil Case No. 7 of 2018 in the District Court of Kilombero at Kilombero.

3. That the judgment was pronounced on my favour.

4. That my Application for Bill of Cost was denied and am seeking to file out of time.

5. That the Application for Bill of cost was rejected by civil registry of your honourable court and was not my fault.

6. That despite various follow up the registry rejected my application as a result it was filed out of time.

7. That unless this honourable court grants the orders sought the Applicant stands to suffer irreparable loss and damage.

8. That I swear this affidavit in support of the application for the Orders listed in the Chamber summons."

In light of the dispositions, the trial court was convinced that the applicant had advanced sufficient explanation for the delay. In arriving at the conclusion, the trial court observed that the applicant was diligent in prosecuting his application but was misled by the

registry officers. The learned trial Magistrate relied on paragraphs 5 and 6 of the affidavit quoted above to arrive at the conclusion that the applicant had demonstrated good cause. Consequently, the applicant, now respondent, was granted 14 days within which to file the appeal. The applicant has appealed believing that the trial court erred in finding that the respondent had demonstrated good cause sufficient to condone the delay.

In support of the appeal, Mr. Kuboja contended that, before the trial court, the respondent failed to advance sufficient explanation on why there was a delay in lodging the application of Bill of Cost. His view was that the respondent had failed to provide any proof, before the court, that the registry officers were responsible for the delay. In support of this allegation the counsel submitted that the decision to which the Bill of Cost emanated was delivered on 18th March, 2019. He added that according to order 4 of **the Advocates Remuneration Order, 2015 (G.N. No. 263 of 2015)** the application for Bill of Cost ought to have been filed within sixty (60) days. The counsel added that the application before the trial court was filed on 01st July, 2020 almost a year later. In his view the respondent was required to account for each day of the delay.

from 18th March, 2019 to 01st July, 2020 the date of filing the application at the trial court. In bolstering his position, he cited the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported). Having said that, the counsel reasoned that the trial court had failed to consider that the respondent had failed to advance sufficient reasons warranting extension of time. He, therefore, urged this Court to allow the appeal and quash the decision of the trial court.

In his response, Mr. Theonest was brief he argued that extension of time was the discretion of the court which was to be exercised on the basis of special and peculiar circumstances presented in each case. Reciting paragraphs 5 and 6 of the affidavit, the counsel maintained that the trial court was right in making a finding that the respondent was diligent and that the delay was not due to his fault but was being misdirected by registry officers. He prayed the appeal be dismissed with costs. There was no rejoinder from the appellant.

Having examined the substance of the application before the trial court and the submissions for and against the appeal, I will now turn into considering the merits of the appeal. As correctly pointed out by Mr. Kuboja, the procedure regulating the filling of applications for Bill of Cost is provided for under order 4 of G.N. No. 263 of 2015.

The respective order reads:

*"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 prepared in a manner provided for under Order 55."*

[Emphasis is mine]

In accordance with the order, the limitation period for lodging an application for Bill of Cost is sixty (60) days from the order awarding costs.

In the instant case, there is no dispute that the decision awarding cost in **Civil Case No. 7 of 2018** was delivered on 18th March, 2019. In accordance with order 4 of G.N. No. 263 of 2015 the respondent had sixty (60) within which to lodge an application for Bill of Cost. That period expired on the 19th May, 2019. It is also on record that Misc. Civil Application No. 42 of 2020 was filed one year

and almost two months later, that is on the 01st July, 2020. For the second time, I agree with Mr. Kuboja that, in terms of section 14 of the LLA to which the application before the trial court was based, as well as the decision in **Lyamuya's Case** (supra), the applicant had a duty to account for each day of the delay from 18th March, 2019 or at least from 19th May, 2019 to 01st July, 2020.

In his affidavit and submissions, the respondent shouldered the blame to the registry officers for misleading him. Again, I agree with Mr. Kuboja that, besides mere allegations of being misdirected by the registry officers, the affidavit and the respondent's submissions failed to provide any proof or explanation as to when and how the respondent was being misdirected by the registry officers. If the respondent was indeed diligent and the allegations against the registry officers were true, the respondent should have provided a full and detailed account of what transpired. Thus, the affidavit should have **first** indicated when the respondent applied to be and was eventually supplied with judgment and decree. **Second**, when, exactly, did he file an initial application and why was it rejected. **Third**, how what was said precluded him from taking the necessary steps for almost one year. **Fourth**, what was the name or names of

the registry officers who misdirected or rejected the application. **Fifth**, the said registry officer or officers should have deponed an affidavit of what they instructed the respondent. In absence of the clear explanation on the above issues, the respondent's assertions remain to be mere statements unsupported by any evidence.

Attempts to shoulder complaints against registry officers are serious and not new. In the case of **Issack Sebegele vs. Tanzania Portland Cement Co. Ltd**, Civil Application No. 25 of 2002 (unreported) faced with a similar scenario the Court of Appeal (**Lubuva, J.A.**) observed that:

*"In order to ascertain that that was in fact what happened, the Court requires some evidence in support of the applicant's claim against the Court Registry Officer. First, in the affidavit in support of the application, it was expected of the applicant to indicate in one of the paragraphs that a particular Court Registry Officer was involved in the delay. This was not done, instead, the applicant simply states in paragraph 6 of the affidavit that he was making follow up of the matter until the application No.2 of 200 was registered. "Second, in an effort to prove that the applicant's claim was not without substance, ordinarily, **this application should have been accompanied with the affidavit of the Court Registry officer dully sworn to that effect.** This, again was not done,. So, as said before, it remains a*

matter of conjecture based on a bare assertion by the applicant that the delay was caused by the Court Registry Officer. This, I am afraid, would not suffice in showing good cause for the delay."

[Emphasis is mine]

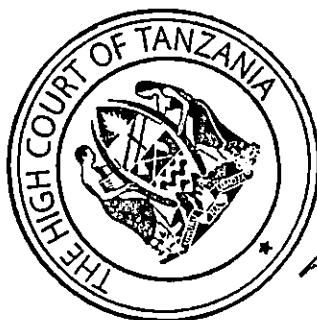
A similar view was adopted by the Court in the case of **Zuber Nassoro Mohd vs Mkurugenzi Mkuu Shirika la Bandari Zanzibar** (Civil Application 93 of 2018) [2018] TZCA 337 (14 December 2018 TANZLII).

Having considered the facts in the present and being guided by the above authorities, I am satisfied that, if the learned trial magistrate had considered the totality of the circumstances in the present case, he could have not arrived at the conclusion he did. I am confident that, based on the records, the respondent failed to provide sufficient explanations in accounting for the one-year delay in lodging an application for Bill of Cost. I am satisfied that the applicant failed to show sufficient cause for the delay to warrant the grant of the application. There being no sufficient cause to warrant extension, it goes without saying that there is merit in the first and second grounds of appeal, considered together.

All said and done, the appeal succeeds to the extent shown in this judgment. With that, I proceed to quash all the proceedings of the trial court in Misc. Civil Application No. 42 of 2020. I also set aside the resultant decision and order of the trial court. Given the circumstances, the appellant shall have his costs.

It is so ordered.

DATED at MOROGORO this 04th day of MARCH, 2022.



S.M. KALUNDE

JUDGE