

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA

MISC. LAND APPLICATION NO. 61 OF 2022

*(Arising from Land Appeal No. 19 of 2021 in the Resident Magistrates Court of Musoma
(Extended Jurisdiction))*

MARWA HARUNI CHACHA.....APPLICANT

VERSUS

MRS SALOME POLYCUP.....RESPONDENT

RULING

24th February & 9th March, 2023

M. L. KOMBA, J.

This is an application for extension of time within which the applicant can file an application for Taxation (bill of cost) out of time. The application is filed under S. 14 (1) of the Law of Limitation Act, Cap 89 [R. E. 2019] and supported by the affidavit of Marwa Haruni chacha.

Origin of this application is Land Appeal No. 12 of 2021 of the Resident Magistrate Court of Musoma (Extended Jurisdiction) where parties had dispute over a piece of land situated at Buhemba in Tarime District (Plot No. 92) In that case, the respondent who rented that house is alleged to sublease the house without consent of either widow or administrator. Appellate court decided in favour of the appellant and awarded costs. In application for the

bill of costs, appellant was late for four (4) days from the maximum of 60 day which was statutorily available, his application was struck out on the ground that he must first obtain leave to enlarge time so that he can file his bill of costs, here he is.

On the day this matter was called for hearing, applicant appeared in-person unrepresented while Mr. Onyango Otieno appeared for the respondent.

Submitting in support of the application, Mr. Chacha said the copy of judgement was delayed and even when he received it, it had no proceedings. Regardless of that delay, he filled application on deadly hours which was 27 September, 2021 assisted by a court clerk and he was told that application should be made online and promised applicant will receive control number so as the applicant can affect payment. Mr. Chacha submitted that control number was received and he paid on the same day. Applicant was surprised to read in the ruling that his application was submitted for filling online 01/10/2021. In proving there was a delay in supply of copy of relevant documents he said on 14/02/2022 he received a copy of proceedings and he had a letter to that effect when this application was already in court. He refers this court to the case of **Samwel Joel Makundi vs. Dr Wilberforce Emanuel Meena and Another**, Misc. Commercial Application No.337 of

2017, HC at DSM and **Mselem Kandili vs. Waziri Thabit**, Criminal Appeal No.396 of 2019 CAT at DSM.

In a different note, he pray this court to reject affidavit of Mr. Otieno on the ground that he was representing the respondent and he don't have sufficient facts over the case. He prayed application to be allowed as the issue of internet and system were beyond his control.

In reply thereto, advocate for the respondent, Mr. Onyango Otieno submitted that the applicant failed to attach documents in support of his allegation of delay in receiving relevant documents neither mention a person who assisted him in filling at the high court. He said it is the requirement of law to show sufficient reason for delay. He refers this court to **Shanti vs. Hindoche and another**, (1973) EALR 207 that applicant must show the delay was not in his own conduct and generally the court must satisfy itself over four elements before granting time. It was his submission that he is aware that granting time is discretion of the court when there is necessity and he pray the application to be dismissed with costs. Mr. Otieno further informed the court that he represented the respondent in Bill of Cost No 19 of 2021 and he is conversant with the facts of the case.

In rejoinder Mr. Chacha, applicant, informed the court that he was assisted to file the document online by a court clerk named Katundu and that the document was sent to Mwanza High court under his personal name and the High Court at Mwanza assisted him to printing only. He further stated that he was in court since 2021 till the date when taxing master issued ruling which was 20/10/2022 and that he was not idle. He prays the application to be granted.

I have keenly followed the submissions advanced by both parties in this application. The duty of this court is to decide whether the application has merit. It is trite law that extension of time is a matter of discretion on the part of the High Court but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. see **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 curreported and **Magnet Construction Limited VS. Bruco Wallace Jones**, Civil Appeal No. 459 of 2020 CAT at Musoma.

Looking at reasons adduced by applicant, in his affidavit he explained he went to High Court on 27/09/2021 to file his application only to be informed of the court new rules that every filing must be online. He was assisted by Mr. Katundu, clerk of the high court on the use of the new system. Even

himself was wondering to read from the ruling that the application seem to be filled in 01/10/2021. However, he was late to receive the copy of the necessary documents and that on 14/02/2022 he received a copy of proceedings and he had a letter to that effect but this application was already filled and that was not possible for him to attach the said latter.

In the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported), it was said that delay in the supply of the necessary copies may constitute good cause warranting extension of time just as was held in the case of **Samwel Joel Makundi vs. Dr Wilberforce Emanuel Meena and Another** as submitted by applicant. Applicant filed his application on late days, which is 27 September due to delay in receiving copy relevant copies, his effort to file was blocked by the use of technology as he was assisted by one court clerk and came to his knowledge that he filed out of time when the ruling was delivered. This is to say among the reasons listed by the applicant is the use of and delay of technology which was beyond his control. I took trouble to inspect the visitors' book on 27th September 2021 and I found that the applicant's name was registered on that day. This suggest that he was truly in the court premised to file case.


In the upshot and for the foregoing reasons, I find the reason adduced by the applicant are meritorious and granting extension of time is for the purpose of better meeting the ends to justice. The application is granted. Applicant has to file bill of cost within 30 thirty days from the date of this ruling.

DATED at MUSOMA this 9th day of March, 2023.




M. L. KOMBA
Judge

Ruling delivered this 9th day of March, 2023 in the presence of the applicant who appeared in person and Mr. Otieno for respondent who was remotely connected.


M. L. KOMBA
Judge
9th March, 2023