

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**MISC. CIVIL APPLICATION No. 102 OF 2021**

**KHAMIS IBRAHIM ZEPHANIA ..... APPLICANT**

**Versus**

**JANES SAMWEL OTIENO ..... RESPONDENT**

**RULING**

16/12/2022 & 24/2/2023

**ROBERT, J:-**

The applicant, Khamis Ibrahim Zephania, applies for enlargement of time within which to file a reference out of time against the decision of the Taxing Officer dated 23<sup>rd</sup> July, 2021 in Bill of Costs No. 20 of 2021 and to entertain the said reference against the decision of the Taxing Officer. The application is supported by an affidavit duly sworn by the applicant.

The applicant was a judgment debtor in a Bill of Costs No. 20 of 2021 filed by the respondent herein having been awarded cost by this Court in Civil Appeal No. 63 of 2020. In a ruling delivered on 23<sup>rd</sup> July, 2021, the Taxing Officer taxed the sum of TZS 1,410,000/= in favour of the respondent. Dissatisfied, the applicant filed this application challenging the decision of the Taxing Officer.

When this application came up for hearing, the applicant appeared in person without representation whereas the respondent was represented by Ms. Ester Tuvave, learned counsel. At the request of parties and leave of the court, the application was disposed of by way of written submissions whereby the applicant's submissions were drawn and filed by Mr. Jackson Marwa Ryoba, learned counsel.

Highlighting on the reasons for the delay, Mr. Ryoba submitted that, the applicant's delay was due to sickness which led to his admission at CF Hospital on 20<sup>th</sup> July, 2021 where he was discharged on 27<sup>th</sup> July, 2021. He referred the Court to annexure K2 to support his argument. He expounded that, the decision sought to be challenged by way of reference was delivered on 23<sup>rd</sup> July, 2021 and the applicant was required to file his reference within 21 days as required under Order 7(2) of the Advocates Remuneration Order, G.N. No. 236 of 2015. This means, he added, the time to file the intended reference lapsed on 13<sup>th</sup> August, 2021. Hence, the applicant filed this application seeking extension of time on 20<sup>th</sup> August, 2021.

Mr. Ryoba maintained further that, the nature of sickness of the applicant, which he referred to as Viral Pneumonia, Nec (Covid 19), required him to stay inside the house for at least 14 days so that he couldn't spread the disease to the public, hence, the remaining time was not sufficient to lodge his reference in Court.

Mr. Ryoba referred the Court to the cases of **Emmanuel R.**

**Maira vs District Executive Director, Bunda District Council** Civil Application No. 66 of 2010 and **John David Kashanya vs the Attorney General**, Civil Application No. 1 of 2012, CAT (Unreported) where the Courts decided that sickness is a good and sufficient reason for the extension of time. Thus, he prayed for this Court to consider the applicant's sickness as a sufficient reason for the delay and waive the days the applicant was admitted to the hospital and the other days he stayed inside the house for better recovery.

In response, Ms. Tuvave agreed with Mr. Ryoba that, sickness is one of the grounds for extension of time but the applicant must provide sufficient supporting documents such as sick sheets showing when he was admitted and discharged to prove that his medical condition prevented him from acting within the prescribed time.

Ms. Tuvave submitted that, the applicant having been admitted in hospital on 20<sup>th</sup> July, 2021 and discharged on 27<sup>th</sup> July, 2021 while the impugned ruling was delivered on 23<sup>rd</sup> July, 2021, he only lost 5 days out of the 21 days which is the time limit for filing the reference. Therefore, he failed to account for 16 days which he was still within the prescribed time to file his reference.

Further to that, she submitted that, according to the patient discharge summary (annexure K.1.2-2), the applicant suffered from Viral Pneumonia, NEC which the counsel for the applicant has tried to define in his submissions to be Covid 19 and maintained that, as a result thereof, the applicant was required to stay inside the house for 14 days after his discharge. She argued that, there is nowhere in the applicant's affidavit or annexures where the applicant suffered from Covid 19 or that he was required to stay at home for 14 days to avoid spreading the disease. She reiterated that the applicant failed to account for the 16 days and therefore failed to show sufficient cause for the delay. Thus, she prayed for the application to be dismissed with costs.

As rightly argued by both parties, sickness may be a good cause for extension of time. To prove sickness as a good cause for extension of time, the applicant needs to provide evidence that his sickness or medical condition was severe enough to prevent him from filing his reference within the prescribed time frame. He needs to provide sufficient medical evidence and supporting documents such as medical certificate or any other medical records which confirms his sickness or medical condition and provide details on the nature and severity of his condition. It should also state how long he was unable to work or perform activities such as lodging of a reference within a particular time frame.

I have looked at the applicant's affidavit and annexures in support of this application. While the applicant's affidavit has only one paragraph stating that the applicant was sick at the time of the decision sought to be challenged, the patient discharge summary (annexure K.1.2) indicates that the applicant was diagnosed with Viral Pneumonia, NEC and admitted at CF Hospital on 20<sup>th</sup> July, 2021 and discharged on 27<sup>th</sup> July, 2021.

Apart from indicating the days which the applicant was admitted and discharged from hospital, the applicant's affidavit and its annexures do not provide sufficient details on the nature and severity of the applicant's medical condition which could prevent him from filing his reference in Court within 16 days after his discharge from the hospital. I am therefore in agreement with the respondent that the applicant failed to account for the 16 days which he was still within the prescribed time of filing a reference in Court after his discharge from the hospital. All arguments regarding his suffering from covid 19 and his stay at home for 14 days to avoid spreading of the virus were mere arguments from the bar and not evidence which can form the basis of decision of this Court. I therefore find and hold that the applicant failed to establish sufficient cause for the delay.

That said, the applicant's second prayer that, after granting leave to file reference out of time, the Court be pleased to entertain reference

against the ruling of the Taxing Officer was not only premature but also flawed and misplaced for want of appropriate avenue to argue the same. I therefore strike it out.

In the end, since the applicant failed to establish sufficient cause for the delay, the prayer for extension of time is hereby dismissed with costs.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
24/2/2023