

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO**

MISC. LAND APPLICATION NO. 58 OF 2022

(Originating from Land Appeal No. 35 of 2019, High Court of Tanzania, at Morogoro)

HALIMA IDI KIDANGA APPLICANT

VERSUS

NASIBU SHBANI MWINJAKU RESPONDENT

RULING

Hearing date on: 20/03/2023

Ruling date on: 27/03/2023

NGWEMBE, J.

This application is preferred under section 14 (1) of **the Law of Limitation Act [Cap 89 RE 2019]**, supported by an affidavit of the applicant. The essence of this application is seeking extension of time to file an application for bill of costs.

The application stems from Land Appeal No. 35 of 2019, where the respondent being the appellant on appeal, his appeal was dismissed with costs. The applicant herein though deserving costs on the dismissed appeal, failed to file Bill of Costs within time. At last, she made this application seeking extension of time within which she may file Bill of Costs out of time.

This application came before me on 05/12/2022, the applicant was present, hence I proceeded to order service of summons to the respondent. Such summons was duly issued on the same date. However, the respondent refused to receive. Copies of summons were returned with endorsement by the Hamlet Chairman to the effect that,



the respondent was informed and received that summons, but he returned same two days later without signing therein.

On 20/03/2023 when the application came for hearing, the respondent never appeared. Finally, the applicant prayed to proceed with hearing *ex parte* as the respondent had exhibited to be not ready to attend the matter. Consequently, this court ordered hearing *ex parte*.

Being unrepresented, the applicant was brief, she just stated that she filed the application for extension of time to file Bill of Costs and reasons for delay are in her affidavit. Actually, in her affidavit, as it will be revealed in the course, the applicant has advanced mainly two reasons for delay; ill health (sickness) and financial hardship which was occasioned by being hospitalized for a long period of time.

Notably, filing Bill of Costs, as the law stands today, is governed under Rule 4 of the **Advocates Remuneration Order 2015, GN. No. 263 of 2015** which 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 prepared in a manner provided for under Order 55."

As earlier observed, the applicant found herself barred in the law of limitation, that is why she made this application. Due to whatever reasons and thinking of the respondent, failure to appear meant voluntary surrender of his fundamental rights of being heard. Since he so decided for failure to heed to the court summons, obvious this court cannot do otherwise than to decide this application *ex parte*.

I am well aware, despite the application remained unopposed, the duty of the applicant to disclose sufficient cause for such delay remained. As such this court must test as to whether the application has merit by subjecting it under the relevant tests established by our laws,

doctrines and precedents. In the case of **Okech Akomo Vs. Konsilata Adoyo (Civil Application 625 of 2022) [2022] TZCA 810**, one of its recent decisions of the Court of Appeal adopted the same when it held: -

"Though the application is unopposed, the applicant's duty to account for each day of the delay remains"

It is settled law that granting of extension of time is within the court's discretionary powers, which is exercised judiciously. Generally, extension of time can be granted if the applicant has shown good cause to the satisfaction of the court, that the delay was not caused by her negligence or inaction. In total, sufficient cause for the court to grant extension of time must be established. This was equally held in the case of **Mumello Vs. Bank of Tanzania [2006] 1 EA 227 (CAT)** where the court held: -

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

Now and then, this court and the Court of Appeal have maintained that position of the law on production of sufficient cause or good cause, which in essence is a subjective concept in relation to the application for extension of time. The same reasoning was considered in the cases of Tanga **Cement Company Limited Vs. Jumanne D. Massanga and Another, Civil Application No. 6 of 2001 (unreported)**, **Vedastus Raphael Vs. Mwanza City Council and 2 others, Civil Application No. 594/08 of 2021** and **William Shija Vs. Fortunatus Masha [1997] T.L.R. 213 (CA)** the common conclusion of all those cases held: -



"What amounts to "good cause" is not defined. It is based on the discretion of the Court which in most cases depends on the circumstances of the case which are to be determined judiciously."

Following that position, the court in our jurisdiction has developed some factors through which, good cause can be tested before granting extension of time. Among other cases are the following, in **Moses Muchunguzi vs. Tanzania Cigarette Co. Ltd**, Civil Reference No. 3 of 2018 (unreported) where the Court of Appeal observed that: -

"The Court has therefore developed some factors which can be considered to constitute good cause. Some of these include promptness of taking action, the length of the delay, illegality and delay in being supplied with the necessary documents."

Yet in the famous case of **Lyamuya Construction Company Vs. Board of Trustees of Young Women's Christian Association of Tanzania** prescribed among other factors that: -

"(a)The applicant must account for all the period of delay. (b) The delay should not be inordinate. (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take."

The above three factors are most relevant to this case as the applicant seeks for extra time within which to file bill of costs. I take note that this application was not contested under the circumstance earlier referred. However, the question whether the applicant has shown sufficient cause for extension of time does not fall.

According to her affidavit, the main reason for her failure to file bill of costs is serious sickness which made her body weaker day by day. It is common ground that sickness is among the good cause for delay and



even for extension of time. See the case of **John David Kashekya Vs. The Attorney General**, Civil Application No. 1 of 2012.

However, such reason works if the applicant for the reason of her sickness, taking all other obtaining circumstances aboard, she could not manage to actualize her intention to apply for bill of costs. Thus, the duty to explain all is on the applicant.

From the above it is proper to reason that sickness alone without proof is not enough. However, taking the impact of that sickness in connection to the intended remedy that the applicant contemplated to pursue, in line with time limitation, this court may grant the application. In the case of **Nyanza Road Works Limited Vs. Giovanni Guidon Civil Appeal No. 75 of 2020**, the applicant before the lower tribunal proved his sickness, but did not show how such sickness occasioned the delay, the court held: -

"While there is no dispute on the respondent's heart complications which would ordinarily constitute good cause, the respondent did not satisfy the CMA that the delay was solely due to sickness."

In this matter, it is not disputed that the applicant was the respondent in Land Appeal No. 35 of 2019 whose decision was entered in her favour with costs on 15/02/2022. According to the law, she was required to file her bill of costs on or before 15/04/2022 (60 days). Instead, she filed this application on 07/11/2022 some 8 months and 22 days from the date of decision.

In paragraph 5, 6, 7 and 8 of her affidavit, the applicant avers that she had been endlessly suffering from kidney complications, since the year 2018 and that soon after this court's decision she fell sick again to the extent of losing consciousness and thus, was hospitalized several

times while undergoing medication. She was consequently weak and unable to undertake her daily activities.

She remained weak and under care until 20/07/2022 when the physician pronounced her wellness, that it was permissible for her to proceed with her activities, but subject to continued dosage, this is stated in paragraphs 9 and 10.

As well I have seen copies of the patient history from 10/05/2018 up to 20/07/2022. In some intervals she was admitted for days. X-Ray pictures representing kidney diagnosis were also annexed. Some NHIF forms (Annexure A2 and A3) shows that the applicant was undergoing some serious treatments in a relatively long period of time.

Under paragraph 11 to 13 she states that in her health crisis, she also faced financial hardship which still prevented her from taking action up to 15th September, 2022 when she sought legal assistance upon which she was informed that she is out of time. The application was eventually filed on 07/11/2022, pleadings demonstrate that the learned advocate who drafted the documents was retained only for drafting those pleadings. Though not by sympathy, I have noted the possibility that the applicant was financially challenged at the time even after regaining her health.

I have also considered the nature of both applications, that is application for extension of time and application for taxation (bill of costs) would not be made by the applicant herself without being assisted by an advocate. This supports her statement in paragraph 11 - 13 that even after recovery she needed minimal financial rejuvenation to proceed further.

Those reasons advanced by the applicant in her affidavit, were capable to prohibit the applicant to exercise her rights to file bill of costs. Section 14 (1) of **The Law of Limitation Act, Cap 89 RE 2019**, is the

right provision in the circumstances of this application. The section confers general powers this court to extend time as quoted hereunder: -

Section 14.- (1) *"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

While mindful and obedient to the trite law that the applicant must account for each day of delay as held in **Praygod Mbagwa Vs. Government of Kenya Criminal Investigation Department & Another [2019] 1 TLR. 629 [CA]** and **Regional Manager TANROADS Arusha Vs. Leon Francis Shine (Misc. Labour Appl. 72 of 2019) [2021] TZHC 2775**. Yet in this application, I find the applicant was impeded by both health problems and financial hardships qualified for Legal Aid. But after she got the means, she acted promptly.

In this particular application, it is just and equitable to rule that, though in total she delayed for about 4 months, the delay was not inordinate and same was out of her control. The application is for securing her costs which she incurred in adjudication of the said cases as awarded by this court, without which, as she deposed in paragraphs 14 and 15, she will suffer some irreparable loss. The application therefore, bears merit.

Having reasoned as such, I proceed to exercise powers of this court to grant extension of time as prayed. Consequently, the applicant may actualize her intension of filing bill of costs within twenty (20) days from the date of this ruling.



Order accordingly.

Dated at Morogoro this 27th day of March, 2023.



A handwritten signature in blue ink, appearing to be "P. J. Ngwembe".

P. J. NGWEMBE

JUDGE

27/03/2023

Court: Delivered at Morogoro in Court Chambers this 27th day of March, 2023 in the presence of the Applicant and in absence of the respondent.

Right to appeal to the Court of Appeal explained.

Sgd: E. Lukumai
Ag, DEPUTY REGISTRAR

27/03/2023

I Certify that this is a true and correct
copy of the original

Deputy Registrar

Date 27/3/2023 at Morogoro