

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

IRINGA REGISTRY

AT IRINGA

MISC. LAND APPLICATION NO. 44 OF 2022

*(Arising from Misc. Land Application No. 31 of 2019 of the High Court of Tanzania,
Land Division at Iringa)*

SARAFINA MPEWA.....APPLICANT

VERSUS

MUFINDI MOSQUITO COIL LIMITED.....RESPONDENT

RULING

Date of Last Order: 05.04.2023

Date of Ruling: 05.05.2023

A.E. Mwipopo, J.

Sarafina Mpewa, the applicant herein, filed this application for an extension of time to file a Bill of Costs arising from Misc. Land Application No. 31 of 2019 in this Court. Mufindi Mosquito Coil Ltd, the respondent herein, filed Misc. Land Application No. 31 of 2019 against the applicant and the application was decided in the applicant's favour. The application is made by chamber summons supported by an affidavit sworn by Dr. Ashery Fred Utamwa, the applicant's advocate. The applicant is praying for the following orders:-

- 1. That, this honourable Court may be pleased to grant an extension of time for the applicant to file a Bill of Costs arising from Misc. Land Application No. 31 of 2019.*
- 2. That, costs follow the event.*
- 3. Any other order(s) this Honourable Court may deem fit and just to grant.*

In opposition to the application, the respondent filed a counter-affidavit sworn by Raymond Philip Byambolirwa, the respondent's advocate.

On the hearing date, advocate Dr. Ashery Utamwa appeared for the applicant, whereas advocate Raymond Byambolirwa appeared for the respondent.

It was the submission by the counsel for the applicant that the applicant was successful in Misc. Land Application No. 31 of 2019 before this Court, and she was awarded cost in the decision, which was delivered on 15/11/2021. The applicant filed in this Court application for a bill of costs within the time on 14/01/2022 and was registered as Taxation Cause No. 4 of 2022. The said Taxation Cause was withdrawn on 27/07/2022 by the applicant. The applicant filed a letter in this Court applying for a ruling on 27/07/2022, and she was supplied with a ruling on 27/09/2022. The applicant filed Misc. Civil Application No. 34 of 2022 for an extension of time to file a bill of cost in this Court, but on 06/12/2022, the applicant decided to withdraw the application following the defects in the application. The applicant applied

for the ruling of Misc. Civil Application No. 34 of 2022 on 12/12/2022. The Deputy Registrar (DR) informed the applicant through a letter dated 21/12/2022 that the copy of the ruling is ready for collection. On 29/12/2022, the applicant filed the present application for an extension of time.

The applicant's said that the reason for the delay was a technical delay. Technical delay is among sufficient reasons for extending time, as stated in **Fortunatus Masha vs. William Shija and Another [1997] TLR 154**. He said that the delay was also partly caused by the act of the Court to delay supplying the ruling to the applicant. The Court's delay in giving the copy of the ruling to the applicant is a good cause for extending time as it was held by the Court of Appeal in **Balega Mugozi vs. Mary Ntunzwe [2002] TLR 141**.

In his reply, the counsel for the respondent submitted that Taxation Cause No. 4 of 2022, filed before this Court, was time-barred. The respondent raised a preliminary objection on the point of law. The said objections were going to the root of the application. The counsel for the applicant decided to withdraw the application following the preliminary objection raised, and the High Court withdrew the application on 27/07/2022. The Court misdirected itself to allow a prayer to withdraw the application before hearing the preliminary objection raised by the respondent first. The applicant's prayer to

withdraw was not made with leave to refile while the said application [Taxation Cause No. 4 of 2022] was already time-barred.

The applicant filed Misc. Civil Application No. 34 of 2022, the respondent raised P.O. as the application had defects. The counsel for the applicant prayed to withdraw the application once again following the preliminary objection raised. The Court allowed the application to be withdrawn. On 06/12/2022, the respondent wrote a letter with ref. No. 06/BC/12/20 to the Court applying for the case's ruling. A copy of the ruling was given to the respondent on the same date, and the respondent signed in the Court register. The applicant's deposition that the Court gave him the ruling on 21/12/2022 is invalid. The applicant wrote a letter applying for the said ruling on 21/12/2022. The applicant was negligent in making a follow-up to get the copy of the ruling from 06/12/2022 when it was ready to be collected. The applicant's negligence could not be a good cause for the Court to warrant the extension of time. The Court of Appeal stated this position in the case of **Maneno Megi Ltd and 3 Others vs. Farida Said Nyamachumbe and Another [2004] TLR 391.**

The counsel for the respondent said that even if it is assumed that the copy of the ruling was ready from 21/09/2022, as the applicant alleges, the present application was filed on 29/09/2022. There are eight days in which the applicant said nothing he was doing. Those days are not accounted for.

The applicant should have accounted for each day of the delay as it is a law requirement. The Court of Appeal stated the principle for the need to account for each day for the delay in the case of **Bharya. Engineering and Contracting Co. Ltd vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017, Court of Appeal of Tanzania at Tabora, (unreported), at page 14. Failure to account for these eight days proves that the applicant was not diligent and did not act diligently to file this application within time in accordance with the law. Extension of time is the discretion of the Court, which has to be exercised judiciously. Also, the one who came for equity must come with clean hands. According to the procedures, the applicant's hands are not clean for failure to utilise time to apply for an extension of time.

The counsel for the respondent distinguished cases cited by the applicant by submitting that, in this case, there is apparent negligence from the applicant. The presence of negligence on the applicant's side could not be termed technical delay as the applicant is trying to make this Court believe. The technical delay ground was not stated anywhere in the applicant's affidavit but was raised in the submission.

In his rejoinder, the counsel for the applicant said that if there was any negligence, it was on the part of the Court, which informed the applicant on 21/09/2022 that the ruling was ready to be collected. It was added that the doctrine of clean hands needs to be more understood and applied in the

situation as it goes to the subject matter and not on the procedure. For the principle that the applicant applying for the extension of time must account for each day of the delay, there must be gross negligence on the applicant's part. When the applicant is diligent, the Court may disregard the principle for accounting for each and every day for the delay.

Having heard submissions from both sides, and as this is the application for an extension of time, the only issue for determination is whether the applicant has sufficient reason for the Court to extend the time to file an application for a bill of costs out of time.

The law is settled that the Court can grant an application for an extension of time with a good and sufficient cause. The discretion of the Court to extend time is provided under section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019. The section reads as follows:-

"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."

In the case of **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal

of Tanzania, at Tanga, (Unreported), while discussing the discretion of the Court to extend the time it held that:

".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. However, this unfettered discretion of the Court has to be exercised judicially, and the overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From decided cases, several factors have been considered, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the applicant's part."

A similar position was observed by the Court of Appeal sitting at Tabora in the case of **Bharya Engineering & Contracting Company Limited vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017, (Unreported), that:-

"What amounts to a good cause cannot be laid by any hard and fast rules, but depends upon the facts obtained in each case, as we stated in Vodacom Foundation. V. Commissioner General (TRA), Civil Application No. 107/20 of 2017 (unreported): the case relied upon by the respondent, each case will be decided on its own merits, taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether every day of

delay has been explained away as well as whether there was diligence on the part of the applicant".

From the above-cited cases, Courts have to consider several factors in exercising the discretion to extend the time for a good or sufficient cause, including if the application has been brought promptly, lack of diligence on the applicant's part, and if every day of delay has been explained. Another factor to be considered is the presence of illegality as it was held in the case of **Efrasian Mjugale vs. Andrew J. Ndimbo and Another**, Civil Application No. 38/10 of 2017, Court of Appeal of Tanzania at Iringa, (unreported).

In the present case, the reasons stated by the applicant for the delay is that during all this time, she was pursuing her right to fill application for a bill of cost. The applicant said the reason was a technical delay sufficient for the Court to extend time.

The Court is aware that technical delay is a good reason for extending time. This position was stated in several cases, including the case of **Bharya Engineering and Contracting Co. Ltd vs. Hamoud Ahmad @ Nassor**, (supra). In the case of **Fortunatus Masha vs. William Shija and another** [1997] TLR. 154, the Court of Appeal, while explaining the technical delay, held that:-

"A distinction has to be drawn between cases involving real or actual delays and those such as the present one, which clearly only involved a technical delay in the sense that the original appeal was lodged in time but was incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances, an extension of time ought to be granted."

From the above-cited case, the principle of technical delay guides where a party promptly files a matter in Court, but the Court strikes it out for incompetence. The ground is sufficient reason for extending the time to file a competent case for the orders or remedies sought in the struck-out matter, provided that the party promptly moves the Court after the striking-out order was made. The principle of technical delay applies in both criminal and civil proceedings.

The facts deposed in the affidavit and the evidence available in the record show that the applicant has been filing one application after the other pursuing her right to apply for a bill of cost in this Court. It indicates that the Misc. Land Application No. 31 of 2019 before this Court was filed by the respondent, but the application was dismissed with costs on 15/11/2021 for lack of merits. The applicant filled the application for a bill of cost in this Court

within the time on 14/01/2022 and was registered as Taxation Cause No. 4 of 2022. It proves that the Taxation Cause No. 4 of 2022 was filed within time. The applicant withdrew Taxation Cause No. 4 of 2022 on 27/07/2022 on the ground that it contains costs originating from different matters that were supposed to be filed separately. The applicant was supplied with a ruling of the Court on 27/09/2022. On 28/09/2022, the applicant filed Misc. Civil Application No. 34 of 2022 in this Court is applying for an extension of time to file a bill of cost. However, Misc. Civil Application No. 34 of 2022 was withdrawn by the applicant on 06/12/2022 following the presence of defects in the application. The applicant applied for the ruling of Misc. Civil Application No. 34 of 2022 on 12/12/2022. The Deputy Registrar (DR) informed the applicant through a letter dated 21/12/2022 that the ruling was ready for collection, and the applicant obtained the copy the same day. The applicant, 29/12/2022, filed the present application for an extension of time. During all this time after Taxation Cause No. 4 of 2022 was withdrawn until 21.12.2022, the applicant was in the Court corridors pursuing her desire to file an application for a bill of cost. This is a technical delay.

The record shows that after receiving the copy of the ruling on 21.12.2022, the applicant used eight days to prepare and file the present application for an extension of time. The eight days used to prepare and file

this application are reasonable. Thus, the applicant has sufficient reasons for the Court to extend the time to file a cost bill.

Therefore, the application is granted, and the applicant has to file his proper application for a bill of cost within thirty (30) days from the date of this order. Each party is to bear his costs. It so ordered accordingly.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke at the end.

A. E. Mwipopo

JUDGE

12/05/2023