

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
THE SUB - REGISTRY OF MWANZA  
AT MWANZA  
MISC.LAND APPLICATION NO. 38 OF 2023**

**CRDB BANK PLC-----1<sup>ST</sup> APPLICANT**

**EAGLE AUCTION MART-----2<sup>ND</sup> APPLICANT**

**VERSUS**

**HAMIDA SEIF AHMAD-----1<sup>ST</sup> RESPONDENT**

**FIDELIS PETRO SWAI-----2<sup>ND</sup> RESPONDENT**

**RULING**

*July 26<sup>th</sup> & August 11<sup>th</sup> 2023*

**Morris, J**

Litigation drifts are not short of reminding humanity that time flies but we are the pilots. This application reflects one of such occasions in which tasting the wrath of time limitation is seemingly inevitable. The applicants above are applying for extension of time. They intend to file reference against the decision of the Taxing Master of the Mwanza District Land and Housing Tribunal (elsewhere, "DLHT") in Misc. Application No. 272 of 2022. The application is supported by the affidavits of Ms. Tupege Anna Mwambosya. Mr. Julius Mushobozi has a counter affidavit opposing the applicants' move. However, the 2<sup>nd</sup> respondent opted not to file his counter affidavit. He, too, did not contest the application anyhow.



On record is a fact that the 1<sup>st</sup> respondent was awarded costs by the DLHT in application No. 134 of 2012. She subsequently filed a Bill of Costs (No. 272 of 2022) claiming Tshs. 26,000,000/= against the applicants and the 2<sup>nd</sup> respondent herein. Through its ruling of 17<sup>th</sup> March, 2023, the DLHT taxed the bill at Tshs. 24,000,000/=. The applicants were aggrieved by the said ruling. However, they were late to challenge it. Hence, this application pursues extension of time for him to file reference against the DLHT taxation.

In this matter, the applicants are represented by Advocate Kaswahili Stephen. Messrs. Julius Mushobozi and Alex Luoga, learned advocates, act for the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively. For the application, it was submitted that the reason for delay is a technical one. The applicants stated that the ruling to be challenged was delivered on 17/3/2023 and they electronically filed an application for reference on 6/4/2023. However, they presented that the filing was erroneously made at Musoma (Labour Division) Registry.

They argued further that the foregoing anomaly was due to the applicants' inadvertent selection of the appropriate court online. It was submitted further that the applicants' counsel kept following up the admission of the application (online) only to discover on 28/4/2023 that

it had been hanging in a wrong registry. According to him, by then, the applicants were already time-barred. Hence, they filed this application on 2/5/2023 because 29<sup>th</sup>, 30<sup>th</sup> and 1<sup>st</sup> May 2023 were a weekend and public holiday respectively. To their counsel, the applicants have never been negligent but were caught up by technical delay. Reference was made to the case of ***Fortunatus Masha v William Shija & Another*** [1997] TLR 154.

Further, it was argued that immediately after delivery of the impugned ruling, the applicants made necessary efforts in order to obtain the ruling which is also tainted with illegality. To the applicants, the ruling involves the bill of costs in Misc. Applications Nos. 134B, 134C of 2012 and 134B of 2018 which were time barred. Buttressing their arguments, the applicants argued that the subject bills were in respect of decisions given in 2012 while, per law, time for bills of costs is 60 days of the decision. He also referred to the case of ***Charles Richard Kombe v Kinondoni Municipal Council***, CoA Civil Reference No. 13/2029 (unreported) that illegality constitutes a sufficient cause for extension of time. The applicants' counsel, consequently prayed for the application to be granted.



In reply, it was submitted by Advocate Mushobozi that the argument of illegality is not tenable. To him, the ruling to be challenged has no illegality at all. He also argued that the time limitation is being raised by the applicants as on afterthought in their counsel's submissions. That is, the affidavits have no such aspect save for paragraph 10 thereof which discloses the reason that the taxing master awarded excessive costs. I was referred to the case of ***Filson Mushi v Jitegemee Saccos Ltd***, Civil Application No. 313 of 2021 (unreported) in which the court made it a rule that submissions are not substitutes of depositions in affidavit.

Further, the technical delay as the ground herein was also contested. It was argued in defence that the applicants never filed the application for reference at all. To the first respondent, annexure KZR/3 indicates that what was filed was a taxation cause instead of reference. He added that the applicants and/ or their counsel were extremely negligent. That is, it took them 22 clear days (from 6/4/2023 to 28/4/2023) to discover that they had filed the matter in the wrong division of the High Court and/ or registry. To the 1<sup>st</sup> respondent, applicants should have made a timely physical follow up at this Court's registry to establish cause of the delay in admitting their application.



He argued further that, the inactiveness and negligence of the applicants or advocate cannot be condoned herein. In his view, pursuant to ***Fortunatus Masha's case*** (*supra*); technical delay implies that the party completely filed and prosecuted the matter wrongly which was not the case in this matter. Hence, he prayed that the said case should be distinguished and this application be dismissed with costs.

Having considered the rival submissions of both parties, it is upon this court to determine whether or not grounds advanced by the applicants suffice in moving this court to allow this application. It is a cardinal law that the powers to extend the time is discretionary. This discretion is, however, exercisable judiciously in accordance with the rules of reason and justice; not being based on private opinion, arbitrariness, vagueness or fancifulness; but rather according to the law and principles. See the cases of ***Damas Essesy and another v Raymond Mgonda Paula and 8 others***, Civil Application No. 32/17 of 2018; ***Bakari Abdallah Masudi v Republic***, Criminal Application No. 123/07 of 2018; and ***Bank of Tanzania v Lucas Masiga***, Civil Appeal No. 323/02 of 2017 (all unreported).

Further, the law enjoins the applicant for extension of time to demonstrate sufficient reason(s) as to why he/she did not take the

necessary step(s) in time. In so doing, he/she will discharge the obligation of proving how each day of delay justifiably passed by at no applicant's fault. Accordingly, the subject applicant will deserve a favorable Court's discretionary advantage. The same position is in ***Hamis Babu Bally v The Judicial Officers Ethics Committee and 3 Others***, Civil Application No. 130/01 of 2020 (unreported).

In the application at hand, the affidavits and the submissions of the applicants indicate that the subject parties purportedly filed the envisaged reference on 6<sup>th</sup> day of April 2023. However, the same was filed in wrong registry and wrong division of this court. Consequently, the same was not admitted. Come 28<sup>th</sup> April, 2023 the applicants allegedly discovered such mistake. To them, this state of affairs amounted to a technical delay. I am alive to the principle that technical delay forms a sufficient reason for extension of time. That is, the fact that the applicant was prosecuting other proceedings in court may be taken into account as stated in ***Mathew T. Kitambala v Rabson Grayson and another***, Criminal Appeal No. 330 of 2018; ***Bharya Engineering & Contracting Co. Ltd v Hamoud Ahmed Nasor***, Civil Application No. 342/01 of 2017; and ***Salvand K. A. Rwegasira v China Henan International Group Co. Ltd***, civil reference No. 18 of 2006 (all unreported).

However, as correctly submitted by the 1<sup>st</sup> respondent's counsel, the applicants' so-called application was never admitted. Therefore, the applicants cannot; by a stretch of reasonable imagination, be considered as having been prosecuting any matter. That is, they were; up to the time of the ostensible discovery, prosecuting nothing in the court of law. In my candid view, the elasticity of the doctrine of technical delay is not elongated enough to the extent of casing the applicants' plight.

The foregoing position aside, although the purported application was timely lodged in the wrong registry and division of the Court; the fact that it took the applicants' counsel over three (3) weeks to notice the mistake, is, to me, the negligence and inattentiveness of adequate weight. In the case of ***Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2/2010 (unreported); it was held, *inter alia* that, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of action that he intends to take. See also, ***Saidi Kibwana & General Tyre E.A. Ltd v Rose Jumbe*** [1993] TLR 175. Therefore, I find the first ground devoid of merit. It is hereby disallowed.

Regarding illegality; paragraph 10 of the applicants' affidavit advances it a reason that the taxing master awarded excessive costs to the 1<sup>st</sup> respondent. During submissions, the counsel for the applicants tabled an argument that the bill of cost subject of this matter included Misc. Applications Nos. 134B, 134C of 2012 and 134B of 2018 which were pursued out of time. The 1<sup>st</sup> respondent, nonetheless, contended that such aspect was raised as an afterthought and out of the affidavital depositions.

I align myself with applicants' position that, illegality when successfully raised, may suffice to move the court to extent time. However, I am not too naïve to appreciate that the same needs to be apparent on face of record. In other words, illegality should not be something inferred from long and unintelligible arguments of parties. In ***Joyce Joram Lemanya v Patricia Patrick Lemanya & Another***, CoA Civil Appl. No. 430 of 2021; and ***Iron and Steel Limited v Martin Kumaliya and 117 Others***, Civil Application No. 292/18 of 2020 (both unreported) it was respectively held that illegality is not a panacea for all applications for extension of time.

In the instant matter, the bill of costs was taxed in respect of application No. 134 of 2012. The affidavit raised an issue of excessive



taxation. Technically, whether or not the amount taxed off constitutes illegality forms integral arguments that are rather evidential-based than otherwise. I, accordingly, find no illegality in this application. So, the 2<sup>nd</sup> ground is also barren of merit.

Before I pen off, I wish to comment on the 2<sup>nd</sup> respondent's strategy of not objecting the application. The bill was taxed against him and the applicants herein. Unsurprisingly, he does not object the application. However, the court still is mandated to see to it that sufficient reasons have been advanced by the applicants; unanimity of the opposite party notwithstanding. Hereof, I have ***Denis T. Mkasa v Farida Hamza (administratrix of the estate of Hamza Adam) & Another***, Civil Application No. 407/08 of 2020 (unreported) in mind for reference.

For the stated reasons, I find this Court not sufficiently moved to extend time as prayed by the applicants. The application, thus, lacks merit. It is accordingly dismissed. Each party to shoulder own costs. It is so ordered.



The right of appeal is fully explained to parties.



**C.K.K. Morris**

**Judge**

**August 11<sup>th</sup>, 2023**

Ruling is delivered this 11<sup>th</sup> day of August 2023 in the presence of Advocate Deogracious Maya for the Applicants also holding brief of Advocate Julius Mushobozi for the first Respondent. The 2<sup>nd</sup> Respondent is absent.

**C.K.K. Morris**

**Judge**

**August 11<sup>th</sup>, 2023**