

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 211 OF 2023

(Arising from Taxation cause No 67 of 2020)

AIRTEL TANZANIA LIMITED APPLICANT

VERSUS

MIRAGE LITE LIMITEDRESPONDENT

RULING

17th & 28th July 2023

MKWIZU, J: -

This application traces its root in a successful Civil Case No. 216 of 2016 filed by the Respondent in this court seeking orders, among others for payment of US\$ 272,765.00 special damages and amount due to the Respondent as per the variations certificate made to the Applicant's purchase order. Pursuant to an order for costs, the Respondent lodged Taxation Cause No. 67 of 2020 seeking payment of TZS, 23,873,000.00 as costs incurred in the prosecution of the suit. The taxation was considered and on 20 March 2023, the respondent was awarded a total of TZS 21,843,000/=

The applicant is not happy with the award. To process her reference, she on 23 March 2023 wrote a letter requesting to be availed with copies of the Ruling and Drawn order delivered by this Court on 27 March 2023.

It is deposed further that, the ruling could not be served upon the applicant on time, until 18/4/2023 while already out of the prescribed time for filing reference hence this application for enlargement of time to file reference against the ruling of the Taxing master's in taxation cause No 67 of 2020 delivered on 20 /3/2023 made under Order 8(1) and (2) of the Advocate Remuneration Order, 2015 supported by the affidavits sworn by Mr. Gasper Nyika counsel for the applicant.

At the hearing, the applicant was represented by Mr. Kiariga N Kiariga , a learned advocate and Mr. Evodius Rutabingwas also learned to advocate for the respondent.

In his submission in support of the application, Mr. Kiariga submitted that the reasons for the delay are failure to be supplied with a copy of the ruling and Order of the court within time and the illegality of the impugned ruling. He said the applicant's letter applying for a copy of the ruling was written on 27th March 2023 and the ruling was supplied to the applicant on 18/4/2023 after the time to file an application for reference had

expired. And that the period from 18th April to the time of filing this application was used for research purposes, preparing the documents before filing the application in court.

He also relied on illegality in the impugned decisions saying, the Taxing officer awarded excessive and exorbitant instruction fees to the tune of Tsh. 18,820,000/= which is 3% of the total claim based on Item 8 of the 9th schedule of the Advocates Remuneration Order contrary to the law. He cited to the court the case of **Delta Africa Limited V Voda Tanzania Public Limited**, Misc. Commercial Application No 70 of 2022. Stressing that the illegality raised is sufficient ground to support the prayers in the application. He lastly prayed for the court to allow the application.

Mr. Rutabingwa resisted the application in both the counter affidavit and his oral submissions made before the court. Mr Rutabingwa submission was that the letter requesting a copy of the ruling attached to the applicant's affidavit has no statement revealing that the decision was required for reference purposes. The letter is specific that the ruling was being applied for further action which to him could mean to satisfy the order. On the justification of the delay, he said, the delay is too long to be pardoned. To him, the application for an extension of time was filed 44 days after the applicant was served with the necessary papers.

He also challenged the illegality point on the ground that for illegality to fit a point for the delay, it must be apparent on the face of the records. To him, the pointed illegality is not of the envisaged type. Citing the Court of Appeal decision in Civil Application No 344/17/2022 **Mtengeti Mohamed V Blandina Macha**, he urged the court to dismiss the application.

Having considered the parties submissions, the issue for my determination is whether the applicant has shown sufficient cause to warrant the extension of time to lodge an appeal sought. The settled law is, to grant such an application, the applicants need to advance sufficient cause including accounting for all periods of delay; the delay should not be inordinate; the applicant must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take. The applicant's application can also be granted on the existence of a point of law of sufficient importance such as the illegality of the decision sought to be appealed against. See **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported)

As introduced above, the taxing master decision was rendered on 20th March 2023. The applicant in the supporting affidavit has narrated a chain of events explaining what transpired since the delivery of the decision to be challenged. She timely wrote a letter requesting a copy of the ruling from the Registrar which was availed to her on 18th April 2023. And the rest of the days from 18 April 2023 to 5th May 2023 was used in reviewing the Ruling, researching the law, advising the client on the proper remedy, and thereafter preparing this application which is almost 17 days.

I have considered the period of delay in line with the applicant's conduct unveiled in the affidavit in support of the applicant. The records reveal that the applicant was represented by a different advocate in the taxation proceedings. She engaged the current advocate just after the complained ruling who according to the affidavit, engaged in following up on the copy of the ruling, reviewing the same, and researching and preparation of documents in respect of this application. I do not find any unwarranted delay in this application. The 17 days spent on such an assignment are reasonable. The application is thus deserving.

Since this reason alone is sufficient to support the application, I will refrain from determining the second point.

The application is therefore granted. Costs to be in the course.

Order accordingly.

DATED at Dar es Salaam this 28th day of July 2023.



E. Y Mkwizu
Judge
28/7/2023