

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM SUB DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO. 219 OF 2023**  
(Arising from Bill of cost No. 131 of 2020)

**AXA INSURANCE LIMITED.....APPLICANT**

**VERSUS**

**ALLIED INSURANCE AGENT.....RESPONDENT**

**RULING**

Date of Last Order: 09/08/2023

Date of Ruling: 25/08/2023

**E.E. KAKOLAKI, J.**

In this application this Court is prayed to grant extension of time within which to file Reference to the same Court, against the order of the Taxing Master dated 27/10/2021, in Bill of Cost No. 131 of 2020, awarding the Respondent a total amount of USD 48,268.11 and Tshs. 2,415,000. Other reliefs sought are cost of the application and any other relief this Court may deem fit to grant.

The application is brought by way of chamber summons, under Order 8 (1) and (2) of the Advocates Remuneration Order, 2015 G.N No. 264 published on 17/07/2015. Grounds in support of the application as found in the affidavit duly sworn by one Dr. Onesmo Kyauke, an advocate authorised by the applicant to swear the affidavit are two. **Firstly** that, technical delay and **secondly** that, the impugned ruling of the Taxing Master dated 27/10/2021 is tainted with illegality.

Hearing of the matter took the form of written submission and proceeded ex-parte against the respondent who failed to enter appearance in Court despite of being served. The submissions were prepared and filed by Ms. Prisca Nchimbi, applicant's counsel. This Court under the provision of Order 8(1) and (2) of the Advocates Remuneration Order, 2015 is crowned with powers to extend time to the applicant upon good cause shown. As to what constitute good cause there is no fast and hard rule as it depends on the materials presented before the Court justifying the delay or grant of the prayed time. See the cases of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (CAT-unreported) and **Oswald Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010. Good

cause therefore might include a number of factors such as whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant. As to illegality of the decision sought to be impugned the same has been considered as a sole ground for extension of time even when the applicant has failed to account for the delayed days. See the cases of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Yong Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Julius Francis Kessy and 2 Others Vs. Tanzania Commissioner for Science and Technology**, Civil Application No. 59/17 of 2018 (both CAT-unreported).

Now trading under guidance of the above cited legal principles, the only issue which this Court is called to answer is whether the applicant has advanced good cause warranting this Court exercise its jurisdiction to grant her the sought prayers. Submitting on the first ground Ms. Nchimbi contended that, the applicant was supposed to file an application for reference on 17/11/2022 which is 21 days from the date of the ruling sought to be challenged delivered on 27/10/2022, and the same was filed on 15/11/2022 two (2) days before the deadline but could not be admitted until 17/11/2022

at 15.33 and the system for issuance of control number for payment of filing fees had problem, which was resolved on 18/11/2022 when the application was physically filed and the fees paid. It was out of that technical ground the said application was found to be time barred and struck on by this Court on 13/03/2023 before the present application which was preferred on 18/05/2023 after two days were spent on 15<sup>th</sup> and 16<sup>th</sup> April, 2023 to prepare the application and lodge it online on 17<sup>th</sup> April, 2023 as per paragraph 18 of the affidavit. According to Ms. Nchimbi the delay to file this application cannot be associated with applicant's negligence but rather a technical delay since the applicant was at all time in Court pursuing her rights. To bolster his argument the learned counsel relied on the case of **Fortunatus Masha Vs. William Shija and Another** (1997) TLR 154.

I have closely followed the applicant's submission and thoroughly revisited the affidavit in support of the application to satisfy myself whether the claimed delay amounted to technical delay. It is true as per the annexed copy of the extract from e-case registration annexure AXA 2, Reference No. 12 of 2021 was filed online in this Court and admitted on 17/11/2021 well within time though the control number was issued on 18/11/2021 and the filing fees paid to that effect on that date, hence the application found to be

time barred and struck out on 13/03/2023. As there was delay in issue of the control number for the case timely filed electronically, I find that amounted to technical delay within the meaning of the case of **Fortunatus Masha** (supra) as the applicant was diligently prosecuting her case but the same was terminated on technical ground.

In view of the above the technical delay covers only the period from when the ruling sought to be impugned in Bill of Cost No. 131 of 2020 was delivered on 27/10/2021 until when Reference No. 12 of 2021 was filed and struck out by this Court on 13/03/2023 for being time barred. What followed thereafter the applicant has to account for, meaning a period of sixty six (66) days from 14/03/2023 to 18/05/2023 when this application was filed. In accounting for such period the applicant avers in paragraphs 17 and 18 of the affidavit that, a copy of the ruling in Reference No. 12 of 2021 was immediately requested on 14/03/2023 and supplied to her on 17/04/2023 before this application was filed and which she depose the delay was not due to negligence. With that evidence this Court is satisfied that the period accounted for is 35 days out of 66 days thus leaving 31 days unaccounted for. It is settled law that, in applications of this nature even a single day of delay has to be accounted for. See the cases of **Bushiri Hassan Vs. Latina**

**Lukio, Mashayo**, Civil Application No. 3 of 2007 and **Mohamed Athuman Vs. R**, Criminal Application No.13 of 2015 (Both CAT-unreported), In the case of **Bushiri Hassan** (supra) the Court stated thus:

***"Delay, even a single day, has to be accounted for, otherwise there would be no meaning of having rules prescribing periods within which certain steps have to be taken..."***

In the present matter since the applicant has failed to account for 31 days of delay and given the fact that technical delay is applicable only up to period when Reference No. 12 of 2021 was struck out for being time barred on 13/03/2023, I hold the applicant has failed to account for the delayed days. Next for consideration is the ground of illegality in which applicant submits that in the sought to be challenged the Taxing Master granted a total amount without considering nature of the case, its complexity, time spent and amount of research involved as the matter ended in the preliminary stage hence there was no justification in granting the awarded amount as well as Tshs. 2,000,000 for prosecuting bill of cost only. It is trite law that illegality of the decision when pleaded has to be apparent on record and not one which is drawn from a very long argument or process such as a point of law on jurisdiction of the Court to entertain the matter. See the cases of

**Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015 and **Moto Matiko Mabanga Vs. Ophir Energy PLC and 2 Others**, Civil Application No. 463/01 of 2017 ( All CAT-unreported). In **Lyamuya Construction Company Ltd** (supra) when considering the issue of illegality, the Court observed that:

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of record, such as the question of jurisdiction; not one would be discovered by a long drawn argument or process.**"*[Emphasis supplied]

In this matter going by the facts supplied by the applicant in support of this ground of illegality I am not persuaded that the alleged illegality is clearly apparent on the face of record. Undoubtedly, it will take a long drawn process to deduce from the impugned decision the complained of

misdirection or non-direction by the Taxing Master. I say so as it requires consideration of evidence to establish applicant's complaint of illegality on award of bill of cost without consideration of complexity of the case, time spent and extent of research employed by the respondent, hence disqualification of the alleged ground as there is no any point of law involved. I find the ground of illegality also to be wanting in merit.

In the premises, the application is barren of merit, hence hereby dismissed in its entirety.

No order as to costs.

It is so ordered.

Dated at Dar es Salaam this 25<sup>th</sup> day of August, 2023.



E. E. KAKOLAKI

**JUDGE**

25/08/2023.

The Ruling has been delivered at Dar es Salaam today 25<sup>th</sup> day of August, 2023 in the presence of Mr. Daniel Y. Masaga, advocate for the applicant and Mr. Oscar Msaki, Court clerk and in the absence of respondent.

Right of Appeal explained.





E. E. KAKOLAKI  
**JUDGE**  
25/08/2023.

