

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SUMBWANGA DISTRICT REGISTRY
AT SUMBAWANGA**

MISCELLANEOUS LAND APPLICATION NO. 15 OF 2022

*(Arising from Taxation Cause No. 1 of 2021, originating from Land Case
No. 1 of 2019)*

BETWEEN

FELICIAN CREDO SIMWELA..... APPLICANT

VERSUS

BENARD KATATA.....1ST RESPONDENT

PAKRINE NGWENGWE.....2ND RESPONDENT

SABAS MWISUA.....3RD RESPONDENT

GERALD ULAYA KABONGE.....4TH RESPONDENT

STANSLAUS NKWENDE.....5TH RESPONDENT

LAHILAGILA KANIKI.....6TH RESPONDENT

SENI MACHANGA.....7TH RESPONDENT

RULING

MRUMA, J

This is an application for extension of time within which the applicant Felician Credo Simwela can lodge a reference to this court against the decision of the Taxing Officer dated 5th January, 2022. The application has been made under Order 8 (1) of the Advocates Remuneration Order, of 2015. The application is strongly opposed by the

Respondents who filed a counter affidavit sworn by their advocate Mr Peter Kamyalile.

At the hearing of this application the Applicant was represented by Mr James Lubus learned advocate while the Respondents were represented by Mr Peter Kamyalile also learned advocate. The application was argued by way of written submissions.

Briefly the facts that gave rise to this application are that; the present Respondents were Plaintiffs in Land Case No 1 of 2019 in which they successfully sued the present Applicant in a land dispute the value of the subject matter of which was over Tanzania Shillings 400,000,000/=. Following their success, the Respondent lodged a bill of costs in which the Taxing Officer taxed the same at Tanzania Shillings 25, 170, 000/=. Apparently the Applicant was not satisfied by that decision but for reasons stated in the supporting affidavit he couldn't file a reference within the prescribed time. It has been submitted by the Applicant's counsel that the delay to file reference was beyond applicant's control as the applicant did not get a copy of the ruling until when he wrote a letter on 9th January, 2021 requesting for the copy of ruling and drawn order which was made available to him on 9th February, 2023.

On second point counsel for the Applicant stated that the Applicant was facing financial constraints which made him unable to file reference within the prescribed time. Mr. Lubus contended that the amount awarded by Taxing Master was excessive and was not in accordance with Rules guiding taxation of bills of costs.

Further to that the learned advocate said that there was a question of law to be determined by this court on reference regarding legality of the order of the Taxing Master.

Responding to the Applicant's counsel for the Respondents submitted that the reason advanced by the applicant has failed to establish sufficient cause upon which court can extend time. He submitted that it is not legal requirement in an application for reference for the applicant to attach a copy of the impugned ruling together with his application, therefore the contention that the Applicant delayed in obtaining a copy of the ruling is not sufficient ground for the delay as per Rule 7 (2) of the Advocates' Remuneration Order, 2015.

Further to that it was the counsel's submission that even assuming that accompanying a copy of the impugned ruling was the requirement of the law, the Applicant's affidavit does not show when he requested for such a copy. The learned counsel submitted that the Applicant failed

to account for every delay of delay from 9th February 2022 up to 17th August 2022 when he filed this application which is a period of six months and 8 days. The learned counsel fortified his position by citing the case of **Franconia Investments Ltd vs TIB Development Bank Ltd**, Civil Application No. 270 /01 of 2020, unreported.

As regards to economic hardship and/or financial constraints, the learned counsel submitted that the same is not a sufficient reason to warrant court to grant extension of time. He made reference to the case of **Wambele Mtumwa Shahame vs Mohamed Hamis**, Civil Reference No. 8 of 2016, CAT at Dar, unreported.

On the issue of irregularities and unfairness of the ruling, Mr Kamyalile submitted that the Applicant has failed to show which rules the Taxing Master violated in awarding costs and concluded that the alleged irregularities and unfairness are not clearly apparent on the face of impugned decision.

I have carefully gone through the records of the matter and the rival submissions of the parties. The only question is whether failure to obtain copy of the impugned ruling within time constitutes sufficient cause of delay but before getting to that question, we have to ask ourselves whether in the first place the Applicant was delayed in

obtaining the said copy. As stated by the Applicant the impugned ruling was delivered on 5th January, 2022. The record shows that the said ruling was handed down in absence of the present Applicant but in presence of the counsel for the present Respondents. In his affidavit in support of the application didn't state the date he applied to the court for copy of the impugned ruling. However in his submissions Mr Lubus contended that the letter was submitted to the court on 9th January 2021. This cannot be possible as the records shows that the impugned ruling was handed down on 5th January, 2022. By submitting that his client applied for a copy of ruling on 9th January 2021, it would mean that he made such application one year before the date of the ruling. That notwithstanding, the record shows that when the date of deliverance of the ruling was fixed the Applicant was present in court but there is no explanation as to why he didn't appear on the date the ruling was delivered. This in my view was negligence on the part of the Applicant and he cannot therefore being heard blaming the court for his own negligence.

Similarly the Applicant didn't give explanation as to when he actually obtained the copy of the said ruling, though the present application was filed on 17th August, 2022 which is a period of six

months after the ruling was handed down. As correctly submitted by the counsel for the Respondent there is no rule in the Advocates Remuneration Order which requires a party aggrieved by the ruling of Taxing Master to attach a ruling in an application for reference. It follows therefore that the Applicant could file his reference before obtaining the copy of the ruling he was challenging. It is now trite law that for the court to grant an extension of time, the Applicant must account for every day of delay. The Applicant has not accounted for every day of delay for the entire period of six months.

On the economic hardship the Applicant is trying to convince this court that he was unable to file reference on time because of economic hardship. As rightly submitted by the counsel for the Respondent economic constraints is not acceptable ground to warrant the court to grant an extension of time.

On the illegality although illegality by itself is sufficient ground to warrant extension of time, however the complained illegality must be canvassed so that court can be in a position to decide whether it constitutes an illegality or not. It is not enough just to state that there was illegality in the matter without explaining what constitutes that

illegality. Learned counsel for the Applicant did not demonstrate what illegality the Applicant was complaining about.

In view of the above, I find that the Applicant has failed to give justifiable reasons for this court to exercise its discretionary power to grant extension of time for the applicant to file reference. Accordingly the application for extension of time to file reference to this court is hereby dismissed with costs. Order accordingly.




A.R. MRUMA,

JUDGE,

20. 9. 2023.