

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM SUB-REGISTRY
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 370 OF 2023
(Arising from Civil Case No.214 of 2013)

Between

VIDOBA FREIGHT CO. LIMITED.....APPLICANT

VERSUS

EMIRATES SHIPPING AGENCIES (T) LIMITED.....1ST RESPONDENT

EMIRATES SHIPPING LINE.....2ND RESPONDENT

RULING

Date of last Order: 27/10/2023

Date of Ruling: 14/11/ 2023

HON.GONZI,J.;

In the chamber summons the applicant is seeking for an extension of time within which to file Bill of costs as per Judgment and decree dated 17th February 2017 by Hon. Teemba, J., (as she then was) in Civil Case No.214 of 2013. The application is supported by the affidavit of Vincent Fire Mwamakimbula, the Principal Officer of the Applicant Company.

In his affidavit the Applicant's Principal Officer has deponed that on 17th February 2017, the High Court pronounced Judgment and Decree in the Civil Case No.214 of 2013 in favor of the Applicant and that the decision

had awarded costs to the Applicant. The Applicant was aggrieved with the decision in respect of calculation of the number of days for awarding compensation hence it appealed to the Court of Appeal of Tanzania.

The Applicant's Principal Officer deponed further that he went to Zambia for so long and lost communication with his Advocates. He tendered his passport as Annexure CF 3 as proof of travel. The Applicant deponed that he later learned that the Law Firm that was representing his company styled as Thadeson Advocates was dissolved in 2022. There was break down of communication with his company's advocates but soon upon returning, he lodged the current application.

In response the Respondents filed a counter affidavit by William Godfrey Mang'ena Advocate for the Respondents. Mr. Mang'ena deponed that the allegation of the Applicant being in Zambia is not backed up by cogent evidence in proof of the duration. He deponed further that dissolution of a partnership firm was not death of the advocates who worked under it. The Respondent's counsel deponed further that in the proceedings, the Applicant was never represented by Thadeson Advocates firm but rather by Decoram Attorneys. On breakdown of communication, the Respondent's

counsel deponed that there are many modern ways of communication like emails and whatsapp which could be used.

The Applicant filed reply to counter affidavit where he deponed that the case was handled by several law firms and that Thadeson was the last firm that handled the case. Also he said that even if the said advocates were still practicing, but there was no communication with him.

On the hearing of this application Mr. Magusu Advocate represented the Applicant while Mr. Tumaini represented both Respondents. Mr. Magusu advanced the grounds for extension of time as follows: firstly that the Applicant was waiting for finalization of her appeal in the court of appeal. It was only when the decision of the Court of appeal was delivered that he decided to claim his costs awarded by the High Court but found himself out of time. The learned counsel submitted that the Bill of costs is crucial as it is lawful compensation to the Applicant. He argued that granting the application will not prejudice the Respondent. He referred the court to the decision by the Court of Appeal of Tanzania in **Godwin Ndewesi and Karoli Ishengoma vs Tanzania** Audit Corporation (1995) TLR 200 to the effect that to justify extension of time some material must be given so that the court can act on it while exercising its discretion. He concluded that the

affidavits and reply to counter affidavit contain the material this court can act upon to extend time. That the breakdown of communication with his lawyers denied the applicant right to be heard. He referred the court to the case of **Sebastian Ndaula vs Grace Wamatha**, Civil Application No.4 of 2014 showing that delay is excusable if sufficient reasons are accounted for.

In response, Mr. Tumain submitted that in **Lyamuya Construction Ltd versus Board of Trustees of Young Christians Women of Tanzania**, Civil Application No.2 of 2010 decided by the Court of Appeal, the court can extend time where sufficient reasons are given. But in the present application there are no sufficient reasons. He submitted that in determining an application for extension of time, the applicant must account for all period of delay, the delay should not be inordinate, the Applicant should not have shown apathy or negligence or sloppiness.

He submitted that the Applicant appealed against the decision of Her Ladyship Teemba, against the award of compensation not costs. So the appeal was not about costs and thus there was nothing to wait for. He submitted that the Applicant has not accounted for every single day of the delay as from the delivery of the decision of the High Court in 2017 that

awarded her costs, and not from the date of delivery of the decision of the Court of Appeal. The learned counsel cited the case of **Hilary Kilario versus AEA Ltd** (2021) and other cases which insist on the need for applicant to account for every single day of the delay. On dissolution of law firm, the Respondent submitted that the affidavit does not have such proof. He argued that the attached passport shows the Appellant left Tanzania in February 2023 and returned in July 2023. It does not account all the days of the delay. He submitted that the case in the court of appeal ended on 24th November 2022, he should have filed this application earlier. He concluded by saying that negligence of an advocate is not a good cause for extension of time. The applicant ought to have made follow-ups.

By rejoinder Mr. Magusu submitted that the affidavit of the Applicant has accounted for every day of the delay. He reiterated his submissions in chief.

I have considered the present application passionately. It is brought under section 14(1) of the Law of Limitation Act, Cap 89 of the Laws of Tanzania.

The provision states 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.

(2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application.

Section 14(1) of the Law of Limitation Act, Cap 89 empowers the court to extend time for filing an application like the present one where there is ***"any reasonable or sufficient cause."*** The issue is whether there is a sufficient cause shown in the present application? I am guided by the case of **Lyamuya Construction Ltd versus Board of Trustees of Young Christians Women of Tanzania**, Civil Application No.2 of 2010 decided by the Court of Appeal. The court can extend time where sufficient reasons are given. The sufficient reasons include the fact that the applicant must account for all period of delay, the delay should not be inordinate, the Applicant should not have shown apathy or negligence or sloppiness.

Has the applicant in this case accounted for every single day of the delay? The time to file the intended Bill of costs started to run immediately after

delivery of the judgment and Decree in the Civil Case No. No.214 of 2013 delivered on 17th February 2017 by Hon. Teemba, J., (as she then was). Until the time of filing the present application on 13th July 2023. That is a delay of over 5 years and 9 months. The question is whether the affidavit of the Applicant sufficiently accounts in respect of all that duration for every single day of the delay? The affidavit of the Applicant attributes the delay to break down of communication with the Applicant's lawyers when he travelled to Zambia and that the Law Firm of his former lawyers was dissolved. He also alleges that he was waiting for delivery of the decision of the Court of Appeal in his appeal. The affidavit of the Applicant makes reference to other persons namely advocates who were practicing law under the law firm of Thadeson Advocates as the ones who had stopped communication with him and that they had dissolved their law firm. But there is no supporting affidavit from the said advocates to collaborate the allegations by the Applicant. Thus his allegations remain merely hearsay. An affidavit for use in court is a substitute for oral evidence and is governed by the same rules of admissibility of oral evidence in court. One such rule is the rule against hearsay. Therefore, I do not accept the allegations of breakdown of communication between the applicant and his

former lawyers. The same has not been substantiated. He could have made them swear supporting affidavits. I hold that the Applicant has not accounted for the time he was allegedly waiting for communication from his former lawyers. In fact, reading through the entire affidavit of the Applicant, there is no any attempt in accounting for the delay. In the case of **Hyasinta Malisa Versus John Malisa**, Civil Application No.167/01 of 2021 decided by the Court of Appeal of Tanzania sitting at Dar es Salaam, the Court of Appeal insisted on the requirement to account for every single day of the delay within which certain steps should have been taken. In the case at hand there are no dates or time frames within which the applicant is accounting as to what had prevented him from lodging the Bill of costs. The affidavit does not show when the court of appeal decision was delivered. It does not show why he could not file the Bill of Costs in the remaining time excluding the February to July 2023 when he was allegedly in Zambia. It does not show why after delivery of the Court of Appeal decision in November 2022 the Applicant could not file the Bill of costs until July 2023. In law a Bill of costs is not affected by the pending appeal, anyway. So, the excuse of waiting the finalization of the appeal holds no

water. The applicant's affidavit does not show where was the Applicant in every single day of the delay.

The Applicant has submitted that the respondents will not be prejudiced if the application is granted and that he needs the costs to compensate him as he was lawfully awarded the costs. With respect, this argument is not convincing. The order for Bill of costs was passed almost 6 years and the Applicant did not claim the costs while there was no bar against claiming it. The Respondents must have genuinely taken it that the Applicant had abandoned his claim for costs. Their financial arrangements must have changed after knowing that the Applicant was not going to claim the awarded costs. It would be unfair and prejudicial to them now, almost 6 years later, to be dragged in court once again in respect of a matter whose deadline ended almost 6 years ago.

On the Applicant being entitled to his compensation for costs, I agree that the Applicant was entitled to claim the costs. But he was not compelled to do so. It is not uncommon for a person to waive his right. The conduct of the Applicant was indicative that he had abandoned or waived his right to apply for costs.

All in all, I find the present application without merits. I dismiss it with costs.



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A.H. Gonzi

Judge

17/11/2023

Ruling is delivered in court today the 17th day of November 2023 in the presence of Mr. Tumaini Advocate for the Respondents and Mr. Vincent Mwamakimbula, Principal Officer of the Applicant Company.



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A.H. Gonzi

Judge

17/11/2023