

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB – REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO. 72 OF 2023

(Arising from the decision of the High Court of Tanzania – Musoma Sub Registry in Civil Reference No. 2 of 2023)

BETWEEN

SYLVESTER WARYOBA APPLICANT

VERSUS

JUMA OMARY KIBASA (Msimamizi wa Mirathi ya

Marehemu OMARI KIBASA MWITA) RESPONDENT

RULING

1st & 22nd February, 2024

M. L. KOMBA, J.

This is an application for extension of time within which to file reference out of time. The application was made by way of chamber summons premised under Order 8(1) of the Advocates Remuneration Order, GN. No. 264 of 2015. The chamber summons is accompanied by an affidavit sworn by applicant's counsel Mary Joakimu. The respondent did not file a counter affidavit to contest the application, thus upon hearing of the application he allowed to argue on legal points only.

As depicted from the applicant's affidavit and records of the application, a brief fact led to the present application can be summarized as follows;

that the applicant herein was lodged a Land Application No. 82 of 2020 against the respondent. But the application was ruled in favour of the respondent herein after the preliminary objection he raised succeeded. The costs awarded in favour of the respondent.

On 22nd December, 2022 the respondent filed the bill of costs to the tune of Tshs. 4,022,000/= against the applicant vide Taxation Cause No. 356 of 2022. Upon hearing, Taxing Master awarded Tshs. 2,200,000/= to the respondent as the instruction fees and other costs.

Being dissatisfied by the decision of the Taxing Master, on 11th June, 2023 the applicant filed a Reference No. 02 of 2023 within time seeking to challenge the ruling of Taxing Master in Taxation Cause No. 356 of 2022. Unfortunately, the Reference filed by the applicant was struck out for being incompetent. On 16th August, 2023 the applicant obtained a copy of ruling in Reference No. 02 of 2023 and started the preparation for lodging the present application.

The applicant's counsel deponed further that the delay to file the present application was occasioned by the applicant prosecuting Reference No. 02 of 2023.

When the matter was placed for hearing before me the applicant was represented by Ms. Mary Joakimu whilst the respondent had the services of Mr. Gervas Emmanuel, both being the learned advocates.

Arguing in support of the application, Ms. Mary Joakimu submitted that Application No. 2 of 2023 was struck out on 09th August, 2023 and they received a copy of ruling on 16th August, 2023 and they filed the present application on 23rd August, 2023. She proceeded that the only reason for delay is the presence of application No. 2 of 2023 and time consumed to follow up the copy of the court order on the said matter. The counsel was of the views that having different case is reasonable ground for extension of time. She prayed the application to be allowed with costs.

In reply, the respondent's counsel submitted that since 09th August, 2023 when the Reference No. 02 of 2023 was struck out to 23rd August, 2023 when the present application was filed, it is almost 14 days elapses of which the applicant did not account of. He averred that, from 22nd May, 2023 up to 23rd August, 2023 there are almost 90 days lapsed.

Referring to the cases of **Finca T. Limited & Another vs Boniface Mwalukisa (Civil Application 589 of 2018) [2019] TZCA 561 (15 May 2019)** and **Principal Secretary, Ministry of Defence and National Service vs Devram Valambia [1992] TLR 185** the

respondent's counsel was of the opinion that account of each day of delay is important. He added that Reference No. 2 of 2023 was not the only reason as the application was struck out on defective affidavit. He prayed the application to be dismissed with costs.

In rejoinder, Ms. Mary Joakimu submitted that applicant managed to account days of delay that there was application No. 2 of 2023 which was struck out and on 16th August, 2023 the applicant was making a follow up, he did not rest. She insists that she had registered the reasonable ground on extension of time as per cited regulation. She proceeded that the case of **Finca (T) Ltd (supra)** is distinguishable because they managed to account each day of delay.

Having heard submissions of parties and went through the application records, the issue for determination is whether the applicant has assigned a sufficient reason(s) to warrant extension of time.

The factors constituting sufficient reason are not firmly explained or listed. They are determined basing on the circumstances of each case. However, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer, the conduct of the parties and the need to balance the

interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported).

Firstly, I concurred with the applicant's counsel argument that the time used to prosecute another case related to this one can be a reasonable ground as the case was struck out on technical errors. See the case of **Bank M T. Ltd vs Enock Mwakyusa (Civil Application 520 of 2017) [2018] TZCA 291 (22 October 2018)**.

But I am also at per with the respondent's counsel contention that, it is settled that party who apply for enlargement of time should explain how he spent each day so that he may be awarded extra days. In the case of **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) it was held as follows:

"...Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules

prescribing periods within which certain steps have to be taken."

In the application at hand, the applicant obtained copy of the ruling in Reference No. 02 of 2023 on 16th August, 2023 and then he lodged the present application on 23rd August, 2023. I noticed six days has elapsed from the date he received the copy of the ruling until he lodged the present application. Remarkably, neither in his affidavit nor in his submission the applicant explains what he was doing in those six days.

It has been held in numerous decisions of the Court of Appeal, that in an application for extension of time, the applicant has to account for even a single day of delay. See **Vedastus Raphael vs Mwanza City Council & 2 Others**, Civil Application No. 594/08 of 2021, CAT at Mwanza, **Omari R. Ibrahim vs Ndege Commercial Services Ltd**, Civil Application No. 83/01, CAT at Dar es salaam and **Salum Rajabu Abdul @ Usowambuzi vs The Republic**, Criminal Application No. 14/01 of 2021, CAT at Dar es salaam.

In this application, I agree with the respondent's counsel submission that the applicant has failed to account for the delay. There is no any reason (s) assigned by the applicant as to why he delayed to file the application within six days.

From the above findings I find that the applicant has not demonstrated sufficient reasons for this court to grant him extension of time. The Remedy available to application of this nature is dismissal as I hereby do. Costs awarded to respondent.

DATED at **MUSOMA** this 22th day of February, 2024.



Nkk
M. L. KOMBA
Judge