

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
THE SUB-REGISTRY OF MOSHI  
AT MOSHI**

**MISC. CIVIL APPLICATION NO. 2264 OF 2024**

*(Arising from District Land and Housing Tribunal of Moshi at Moshi 'DLHT' in Taxation Cause No 121 of 2023 and Originating from Misc. Civil Application No. 74 of 2023 of DLHT of Moshi at Moshi)*

**KASIMU ALLY MSUYA.....1<sup>ST</sup> APPLICANT**  
**SALIMU MOHAMED.....2<sup>ND</sup> APPLICANT**  
**SHABANI KHALIFA.....3<sup>RD</sup> APPLICANT**

***VERSUS***

**SAIMON OMARI MSUMANJE.....1<sup>ST</sup> RESPONDENT**  
**DICKSON OMARI MSUMANJE.....2<sup>ND</sup> RESPONDENT**  
**SOLOLMON OMARI MSUMANJE.....3<sup>RD</sup> RESPONDENT**  
**VALENTINE OMARI MSUMANJE.....4<sup>TH</sup> RESPONDENT**  
**SILLA ELIA MSUMANJE.....5<sup>TH</sup> RESPONDENT**  
**JOEL ISACK MSUMBA.....6<sup>TH</sup> RESPONDENT**  
**ELIKANA M. MSUMANJE.....7<sup>TH</sup> RESPONDENT**

**RULING**

10<sup>th</sup> & 28<sup>th</sup> June, 2024.

**A.P. KILIMI, J.:**

Upon receiving the proceedings on Taxation Cause No 121 of 2023 and Misc. Civil Application No. 74 of 2023 of the District Land and Housing Tribunal 'DLHT' at Moshi the applicants herein noticed that they were out of time for filling an application for reference. Kasimu Ally, Salimu Mohamed

and Shabani Khalifa the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants herein knocked the door of this court for extension of time to file reference against the ruling in Taxation Cause No. 121 of 2023. Their application is being made under order 8 Rule 1 and 2 of the Advocate Remuneration Order of 2015 and supported by their joint affidavit duly sworn.

As per their affidavit they have averred that, in the DLHT of Moshi the applicant filed an application in Misc. Civil application No. 74/2023 and then withdrew it, wherein among other things they were applying for a tribunal to allow them to file a representative suit against the respondents herein. When the applicants withdrew from the said application with the aim of filling a proper application, the respondents herein filed the bill of costs against such withdraw and a Taxation Cause No. 121/2023 was registered, wherein on 09/11/2023 the respondents herein were eventually awarded costs. The applicants' further states that on 10/11/2023 they wrote a letter with reference number SM/08/019/02 to the tribunal requesting to be supplied with the copies of proceedings, ruling and decree. They successful obtained the said copies on 06/12/2023 upon some follow ups and found out that they were out of time to file their reference.



In a counter affidavit sworn by the respondents advocate Mr. Arnold A. Tarimo, the respondents admitted part of the applicants' affidavit and put the applicants into strict proof thereof by stating that the date when the applicant letter was received by the Tribunal it was undisclosed for unknown reasons. The counsel further in paragraph 10 of the counter affidavit stated that the paragraphs in the applicant affidavit were a hearsay statements as the remainder dates in which letters were written and received to tribunal were also undisclosed with unknown reasons. Further there were no reasons adduced by the applicants as to why they never filed the reference from 6<sup>th</sup> December 2023 up to 15<sup>th</sup> December 2023 when the application at hand was filed, thus they delayed for nine days without accounting the reasons and that they ought to pursue their matter diligently.

When the matter was scheduled for hearing before me the applicants were represented by Mr. Philemon Shio learned advocate while Mr. Arnold A. Tarimo learned advocate represented the respondents. I appreciate both of the learned counsel for their timely adhering to the scheduling orders in filling their submissions which are highly appreciated.

The issue now is whether the applicants have adduced sufficient cause for this court to extend time for filing reference.

Mr. Shio contended that as per paragraph 7 and 8 of the applicants' affidavit, they received copies of the tribunal late because there were no one to proofread the typed proceedings of ruling and decree hence the tribunal failure to supply those copies on time, affected the applicants timely for filing the references. The learned counsel submitted further that the applicants were diligently in pursuing their application and went further even in filling online (e Case Management) but faced challenges thereto. He invited this court to consider the decision of **Lyamuya Construction Co. Ltd. vs. Board of Registered Trustees of Young Women's Association of Tanzania**, Civil Application No.2/2010 CAT at Arusha at page 6 on the discretion of the Court in granting extension of time upon showing good cause. He further referred the decision of **Zilaje vs. Feubora** (1972) HCD 3 where it stated that the court may not grant remedy where there is a proof that the part did not act with reasonable promptitude. The counsel went on submitting that the tribunal decision was tainted with illegality when it awarded the respondents high amount of costs which occasioned miscarriage of justice.

In reply Mr. Arnold strongly resisted the application for grant of extension of time to applicants herein for the reasons that the applicants



failed to show sufficient cause and did not account for each day of delay. The counsel submitted that the applicants obtained copies of ruling on 06 December 2023 and the date where they filed the application at hand was 15<sup>th</sup> December 2023. The counsel argued that the court was to award extension of time only upon showing good cause which the applicants herein failed to do so as their delay were nine days from the date they obtained the copies of proceedings. He further argued that the application filed by the applicants and later withdrew were not about a representative suit rather an application for temporary injunction.

The counsel went further on adding the factors to be considered in granting extension of time as submitted by the applicants' counsel and that in **Lyamuya Construction** (supra) the court in its discretion when awarding the applicant an extension of time among other things has to consider if there is illegality sought to be challenged. He also referred to the decision of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at page 4. The counsel further stated that the allegations that no one was there to proofread the tribunal proceedings were just a hearsay evidence and afterthought as there were no affirmed/ sworn affidavit to accompany the same. He added that no printout was brought by the

applicants to show that they met challenges while filling an online application. He cemented his argument by referring the decision of this Court in **Ernest Salehe vs. Paulo Shiliyo**, Misc. Civil Application No. 7/2023. The counsel stated further that the allegation that the decision was tainted with illegality were not apparent on the face of record.

Back home to whether the applicants had adduced sufficient cause for this court to grant extension of time.

As correctly argued by both learned counsel, the court is vested with discretionary powers to grant extension of time upon showing sufficient cause (see **Lyamuya Construction** (supra)). However, what amounts to "sufficient cause" has not been defined. From decided cases a number of factors have to be taken into account including 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. (See **Usufu Same and Hawa Dada vs Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported)).

I wish to start with the applicant's argument of illegality, in this regard Mr. Shio contended that taxation cause No 121/2023 were tainted with



illegality as evidenced in the applicants affidavit as per paragraph 5 that the award of costs were too high. I'm aware of the principle that once there is illegality pleaded as one of the grounds for extension of time, then the court ought to overlook and forbear the accounting of each day for delays. As per the decisions of **Lyamuya Construction** (supra) illegality ought to be seen on the face of records. Upon perusing the application at hand, the ruling itself and the records in general, I'm of the view that the illegality adduced by the applicants requires evidence to prove that the tribunal awarded the respondents high costs. As it is not evidenced anywhere in the applicant affidavit except through by revising the ruling itself which in my view it will be like deciding on the reference itself, I refrain myself in doing so as approaching such a road will be evaluating the evidence and automatically ruling on reference. Thus, since illegality needs to be seen on the face of record which is not in this matter, this reason advanced fails forthwith.

The next point to be considered is whether the applicant was prompt and accounted for each day of delay. In this matter, it is undisputed facts that the applicants obtained copies of proceedings, ruling and decree of Taxation Cause No 121/2023 on 06/12/2023 which was delivered on

9/11/2023 which entails that they were out of time to file their reference application.

The records further reveals that the applicants filed the application at hand for extension of time in this Court on 15/12/2023. Clearly those are nine (9) days after the proceedings were in the hands of the applicants. I am mindful 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. (See **Interchick Company Limited vs. Mwaitende Ahobokile** Civil Application No. 218 of 2016 (unreported).

From the foregoing, the next question I have asked myself is whether 9 days passed for the sake of argument are reasonable to prepare such an application and file on the date said above.

In paragraph 8 of their affidavit the applicants aver that from 06/12/2023 upon being supplied with the copies of proceeding, they started the process of filing their reference to find out they are already out of time and those days that followed from the date of signing and certifying those proceedings falls on weekend whereas they could not be able to file their Application for extension of time.



In my view of the above stated by the applicants coupled with the process of drafting and preparing the instant application, I am of the considered view that the said days are reasonable since they were spent preparing and filing the current application. In deciding so I have taken regard to the circumstances stated above, and also, I am motivated by the decision of the court in **Patrick Magologozozi Mongella vs. The Board of Trustees of the Public Service Pensions Fund** Civil Application No. 1999/18 of 2018, where 12 days were found to be reasonable in preparation and filing of the application for extension of time upon receipt of the necessary documents in pursuit of intended revision. For the foregoing reasons, I find applicants have accounted for the delay of 9 days which I hold was not inordinate under the circumstance of this matter. In the premise, I find that the applicants have established sufficient cause for granting the application as prayed and which I hereby do. The application for reference be filed within 14 days from the date of pronouncement of this Ruling. In the circumstances no orders as to the costs, each part to bear its own costs.

It is so ordered.

**DATED** at **MOSHI** this 28<sup>th</sup> day of June, 2024.



*A.P.K.*

**A. P. KILIMI  
JUDGE**

**Court:** Ruling delivered today on 28<sup>th</sup> day of June, 2024 in the presence of Mr. Philimoni Shio for applicants, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants and 5<sup>th</sup> Respondent also present, others absent.

**Sgd: A. P. KILIMI  
JUDGE  
28/06/2024**