

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM**

CIVIL REFERENCE NO. 7628 OF 2024

SALAAMAN HEALTH SERVICESAPPLICANT

VERSUS

DR. BAGHAYO ABDALLAH SAQWARE.....RESPONDENT

RULING

22nd May & 13 June, 2024

DYANSOBERA, J.

This is an application whereby the applicant is moving this court to invoke its reference powers to quash and set aside the decision of the Taxing Officer made in Misc. Civil Application No. 27082 of 2023 dated 22nd day of March, 2024 and thereby extend time for the applicant to file its bill of costs in Civil Case No. 129 of 2021 decided on 27th June, 2023. The applicant is also praying for costs and any other or further reliefs.

The application has been made under Order 7 (1) and (2) of the Advocates' Remuneration Order, GN No. 263 of 2015 and supported by the affidavit of Salum Nassoro Igangula, the applicant's principal officer. The respondent has opposed the claim by way of a counter affidavit deponed to by the respondent.

In order to better appreciate the issue in controversy between the parties, an exploration of the factual setting is axiomatic; it can be, briefly, recapitulated thus. The respondent instituted before this court Civil Case No. 129 of 2022 against the applicant on defamation. The applicant filed notice of preliminary objections challenging the jurisdiction and competence of the respondent's petition. Parties' advocates filed written submissions in support and opposition of the preliminary objection.

Sustaining the jurisdiction issue, this court did, on 27th June 2023, strike out the petition with costs.

It came to pass that the applicant delayed in filing its bill of costs within the prescribed timeline. It, through Mr. Juma Nassoro, learned counsel, filed an application (Miscellaneous Civil Application No. 27082 of 2023) seeking an extension of time within which to file the bill of costs against the respondent in Civil Case No. 129 of 2022 in a decision delivered on 27th June, 2023. Two reasons were assigned for the delay. One, the ruling was not timely availed to the applicant and two, he, Counsel for the applicant, was engaged in a Criminal Sessions Case No. 2018 of 2022 between **R. v. Saidi Bakari Mawazo**, which, according to him, took him up to 23.11.2023.

Although the Taxing Officer agreed with the learned counsel for the applicant being engaged in a criminal session and other activities from

when the judgment was delivered to the 17th November and later it was extended for a week further to 23rd November, 2023 and that there were issues with filing cases in the system, she however, dismissed the application with costs on the ground that the applicant had failed to account for the period between 23rd to 28th November, 2023. The ruling was handed down of 22nd March, 2024.

Aggrieved, the applicant has, through the legal services of Mr. Nassoro, learned Advocate, file this application.

During the hearing of this application, the applicant and the respondent were duly represented by the learned Advocates.

Submitting in support of the application, Counsel for the applicant Mr. Juma Nassoro, after adopting the chamber summons and the supporting affidavit, submitted that although in her decision the Hon. Deputy Registrar agreed that there was sufficient reason for the delay, she rejected the application for extension of time to file bill of costs on the reasons that there were five days delay which were not accounted for. Counsel for the applicant maintained that the reason for the delay was that he was engaged in criminal sessions before their Lordships Ngunyale and Mrisha, Judges, the fact which has been admitted by the respondent under paragraph 4 of his counter affidavit. He clarified that going by the cause list attached to the affidavit, a criminal session started on 20th

November up to 14th December, 2023 and he was one of the advocates appearing in those cases. Mr. Nassoro stressed that the five days delay were fully accounted for and urged the court to find that sufficient cause had been established and that the application should be allowed.

Mr. Mlyambebele Abedinego Levi Ng'weli, counsel for the respondent, strenuously opposed the submission by counsel for the applicant. Adopting the respondent's counter affidavit, he at first, notified the court that the summons annexed to the affidavit referring to criminal session No. 211 of 2022 between **Republic v. Haruna Mussa Lugeye** before Hon. Mrisha, J. was not annexed to the application for extension of time. According to him, it is a cardinal requirement of the law that for the Honourable Court to grant extension of time, the applicant must account for each day of delay. He maintained that the only period counsel for the applicant managed to account for was when he was engaged in criminal sessions from 23rd October to 17th November, 2023 but failed to account for the period between 23rd November to 28th November of 2023. Counsel for the respondent sees much sense in the Taxing Officer rejecting the prayer for extension of time.

Admitting that the application was signed on the 28th November, 2023, counsel for the respondent contended that the same was filed on 7th November, 2023.

On the problems with the e-CMS filing system, counsel for the respondent argued that this was a statement from bar unsupported by evidence taking into account that no reply to counter affidavit was filed. It was prayed on part of the respondent that the application be dismissed with costs.

Rejoining, Mr. Juma Nassoro insisted that according to the ruling of the Taxing Officer at p. 5 in particular, the period of days allegedly not accounted for are from 23rd to 28th November, 2023. He explained that he had sufficiently explained that by the time he was engaged in criminal sessions and as admitted by the Hon. DR, since November, 2023 when the e-CMS filing system was introduced there arose problems and that a judicial officer exercising their discretion judiciously could have granted the application.

I have dispassionately considered the records and weighed the rival arguments from both parties. The law empowering the court to extend time to file a bill of costs is clear. Order 8(1) and (2) of the Advocates' Remuneration Order, 2015 Government Notice No. 263 published on 17/07/2015 is clear and stipulates that: -

"8. -(1) The High Court may, subject to order 7 extend the time for filing a reference upon sufficient cause.

(2) An application for extension of time shall be made by way of chamber summons supported by an affidavit and be served to parties at least seven days before for hearing date.”

However, whether to grant or refuse an application of extension of time is entirely in the discretion of the court. Nonetheless, I am not in oblivion of the fact that the discretion is a judicial one and must be exercised reasonably, judiciously and according to the rules of fair trial and administration of justice.

For the court to be able to exercise its discretionary powers in the applicant’s favour, the applicant was duty bound to furnish to the court sufficient reasons.

From the foregoing exposition, two issues arise for determination. One, whether the reasons adduced by the applicant for the delay amounted to sufficient cause. Two, whether the Taxing Officer properly exercised her discretionary powers in dismissing the application for enlargement of time to file bill of costs.

Admittedly, what amounts to sufficient cause has not, to date, been established. It all depends on the circumstances of a particular case. In **Abdallah Salanga and Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001, the Court of Appeal confirmed this by observing that: -

“No particular reason has been set out as standard sufficient reasons. It all depends on the particular circumstances of each application.”

In relation to the first issue, the applicant before the Taxing Officer advanced two reasons for the delay. The first reason was that the ruling was not timely availed to the applicant. According to the record, the decision was delivered on 27th June, 2023 but copies were availed to the applicant on 17th October, 2023; by the time the deadline had already expired. Second, Mr. Juma Nassoro who was representing the applicant was engaged in a criminal session number 218 of 2022 between **R. v. Saidi Bakari Mawazo** which was pending before Ngunyale, J. Counsel told the taxing court that the case took him up to 23rd November, 2023 and that it is not until he finished the session that he prepared the application which was filed in court. The application was, according to learned counsel, signed on 28th November, 2023 but delayed due to the process of filing.

In response to those reasons, counsel for the respondent contended that Mr. Juma Nassoro had failed to demonstrate the availability of other advocates in the law firm. He also argued that the delay from 18th to 23rd October, 2023 was not fully accounted for and that the same applied to

his being engaged from 17th November, 2023 until the application was filed.

Mr. Juma Nassoro rejoined by insisting that he was engaged in a session and to reinforce his argument, he made reference to the annexed summons and cause list.

There is no dispute and authorities abound that what amounts to sufficient cause has not been defined. However, there are some factors to take into consideration including whether or not the application has been brought promptly and lack of due diligence on part of the applicant.

The delay to be supplied with the necessary documents, particularly, a copy of ruling, in my view, contributed to the delay in filing the bill for costs. Likewise, the undeniable fact that the applicant's advocate was engaged in a criminal session, the fact which was not only supported by the summons and cause lists annexed to the applicant's affidavit but also admitted by the respondent constituted a sufficient cause.

According to the summonses and cause lists, Mr. Juma Nassoro was assigned Criminal Session Case No. 218 of 2022 between **R. v. Saidi Bakari Mawazo and 5 others** from 23rd October to 17th November, 2023 before Ngunyale, J. and Criminal Session Case No. 211 of 2022 between **R. v. Haruna Mussa Lugeye and 2 others** from 20th November to 14th December, 2023 before Mrisha, J. Apart from the record before the Taxing

Officer revealing that scenario, the applicant's affidavit in support of this application has clearly demonstrated the same position.

I am satisfied that the applicant had adduced reasons amounting to sufficient causes to warrant the Taxing Officer grant the application for extension of time.

On whether the Taxing Officer exercised her discretionary powers reasonably, judiciously and according to the rules of fair trial and administration of justice, the answer must be in the negative. This is partly because, the said Taxing Officer admitted the applicant's counsel having been assigned conduct in those criminal sessions. At p. 5 of the typed ruling, she is recorded to have stated: -

'I would admit that indeed, counsel for the applicant was engaged in other activities from when the judgment was delivered to the 17th November and late it was extended for a further one week to the 23rd November, when the criminal session in which he was representing one of the accused on a *pro bono* basis was finalised. It is no disputed that the applicant's affidavit was signed on the 28th day of November, 2023 and the case filed on 17/12/2023. I personally agree with all the stated reasons, but the period between 23rd November to 28th November was not accounted for.'

And partly because, the Taxing Officer made admission that, *'I well admit that there were issues with filing cases in the system specifically since November, when CMS system came into place, but then again, if we*

are to consider the established principle set out in different cited cases above, it meant the applicant was obliged to account for each day, but surprisingly he had left 5 unexplained days hanging.

With unfeigned respect, the Taxing Officer went off tangent. As demonstrated above, counsel for the applicant was assigned and engaged in Criminal Session Case No. 211 of 2022 between **R. v. Haruna Mussa Lugeye and 2 others** from 20th November to 14th December, 2023 before Mrisha, J. The above period covered the period between 23rd and 28th November, 2023 which the Taxing Officer claimed to have not been accounted for. With this glaring fact, the learned Taxing Officer swam in an error in holding that the said period was not accounted for.

Furthermore, in the matter in question, there is no dispute that the applicant had the right to enjoy the fruits of the decision of the court. The dismissal of extension of time for no apparent reasons stifled his rights. In making this finding, I have to borrow the wisdom of the Court in the case of **Minister for Energy and the Attorney General and East African Gold Mines Ltd as Intervenor v. Mobraima Gold Corporation Ltd.** [1998] TLR No. 425, when the Court that;

“It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondent’s delay does not constitute a case of procedural

abuse or contemptuous fault and because the applicant will not suffer and prejudice, an extension should be granted”

For the stated reasons, I am satisfied and hereby find that the applicant had given sufficient reasons for delaying in filing bill of costs and the Taxing Officer injudiciously exercised her discretionary powers in dismissing the application.

Accordingly, the application for reference is allowed with costs. The decision of the Taxing Officer dated 22nd March, 2024 is quashed and set aside. Time for the applicant to file bill of costs is extended. The bill of costs shall be filed within 21 days from the date of this ruling.

Order accordingly

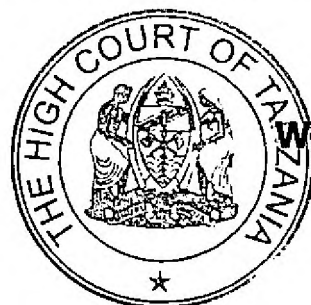


W.P. Dyansobera

Judge

13.6.2024

This ruling is delivered at under my hand and the seal of this Court on this 13th day of June, 2024 in the presence of Pensia Mbilinyi holding brief for Mr. Mlyambebele Ng'weli for the respondent and Salum Nassoro Igangula, Principal Officer of the applicant.



W.P. Dyansobera

Judge

13.6.2024