

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 95 OF 2005

UNION OF TANZANIA LOCAL OIL
COMPANIES.....PLAINTIFF

VERSUS

TANZANIA ASSOCIATION OF OIL
MARKETING COMPANIES LIMITED ... 1ST DEFENDANT

SGS TANZANIA SUPERINTENDENCE
COMPANY LIMITED.....2ND DEFENDANT

R U L I N G

Date of final submission August 6, 2007.

Date of ruling September 10, 2007.

Mjasiri, J

This is an application for extension of time to file a Bill of Costs. The application was brought under Order XLIII Rule 2 and section 95 of the Civil Procedure Act Cap 33[R.E.2002] and was supported by the affidavit of Amour S. Khamis, Advocate.

On June 12, 2006 the Applicant was granted leave to withdraw the suit and the Respondent was ordered to pay costs of the suit. However the Bill of Costs was not filed by applicant until May 2007. According to the affidavit of Mr. Khamis Advocate his firm moved from Plot No.24 Ocean Road to Plot No.31 Ruhinda Street. In the course of shifting offices the file was misplaced. The missing file was found in May 2007.

Ms Kireithi Advocate for the Respondent stated in her counter affidavit, that Mr. Khamis as an officer of the court knew and ought to have known the importance of court documents and the misplacement of a court file for almost ten months did not constitute sufficient reason for extension of time.

The applicant was represented by Nuhu Advocate and the Respondent was represented by Mr. Ndibalema advocate.

Mr. Ndibalema advocate strongly opposed the application.

According to Mr. Ndibalema Advocate the application for the Bill of costs is regulated by Rule 21 of Part III of the Schedule under the Law of Limitation Act cap 89 [R.E.2002]. The application for extension of time was filed in court in May 2007 and the order of the court was made on June 12, 2006. It is now almost 11 months. The application was made under section 14(1) of the Law of Limitation Act.

Section 14 of the Law of Limitation Act provides that any application for extension of time should adduce sufficient reasons. The applicant has failed to do so. According to the Counsel for the Respondent the delay was caused by recklessness and lack of due diligence. No efforts were made to peruse the court file. According to Counsel the court is not a place for testing probabilities. The purpose of limitation is to end litigation.

Counsel for the Respondent further submitted that if the application does not fall under part III of Rule 21 of the Law of Limitation Act, there would be no need for the application for extension of time, filed by the Applicant.

Counsel for the Respondent submitted that a Bill of Costs should be made within 60 days citing the case of **Tanzania Harbours Authority V Mohamed R. Mohamed** Civil Appeal No.80 of 1989(unreported) where the case of **Silas Simba V Editor Mfanyakazi Newspapers**, application for Bill of Costs was filed after one year and was dismissed.

Counsel for the Respondent also cited the case of **Samson Gobba V Charles Kingango Gobba** 1990 TLR 133 and stated that there was no sufficient and reasonable grounds to support the application. Counsel for the Respondent also cited the case of **Inspector Sadik and others V Gerald Nkya** 1997 TLR 290 which also deals with sufficient grounds.

Mr. Ndibalema learned Counsel for the Respondent submitted that the Applicant has failed to show sufficient reasons.

According to the Counsel for the Respondent a delay of eleven months is unreasonable and

constituted recklessness and negligence on the part of the Applicant.

Mr. Nuhu Counsel for the applicant put up a spirited fight in support of his application. According to him a Bill of Costs is not an application envisaged in part III of Rule 21 in the schedule to the limitation act 1971. It is a factual statement of services rendered and disbursement made. Counsel cited Kuloba on Judicial Hints of Civil Procedure. Counsel also cited Mfalila J (as he then was) in **Masolele General Agencies V African Inland Church of Tanzania [1994] TLR 193;**

“a bill of costs is nothing more than a tabulated costs incurred by a party in the conduct of the case and which he seeks to be reimbursed by the other party. It is not the entitlement that may be claimed in the body of a suit.”

Therefore according to Counsel for the Applicant there is no time limit for filing a bill of costs.

The Advocates Remuneration and Taxation of Costs Rules 1991 are silent on this point. Mr. Nuhu further argued that even if it is assumed that a Bill of Costs is an application, the limitation period will fall under Part III rule 20 of the schedule of the Law of Limitation Act. Under the said rule the period of limitation is 12 years.

Counsel for the Applicant also contended that the costs were a result of a court order.

Counsel further submitted that if the court was to rule that the limitation period was 60 days sufficient reasons have been provided in view of the Applicant's relocation from one office to another and the misplacement of files which occurred. Counsel also submitted that the case of Tanzania Harbours Authority was not a Court of Appeal decision but the decision of a taxing master not binding to this court. The decision of **Silas Simba** cited therein is distinguishable from this case as the delay was 5 years, whereas there is only a 9 months delay in this application.

I have carefully reviewed the affidavits filed and the submissions made by Counsels, and the law applicable.

I find it very interesting that the Counsel for the applicant after having filed an application for extension of time to file a bill of costs can simultaneously argue in court that the limitation period is 12 years citing the provisions of Rule 20 Part III of the Third Schedule to the Law of Limitation Act [R.E.2002].

Having said that it is my finding that the limitation period is 60 days as provided under section 21 of Part III of the Schedule to the Limitation Act.

According to KJ AIYAR's Judicial Dictionary (13th Edition) application is defined as under:

"A request made orally or in writing to a court".

I would also like to mention in passing that in **Masolele General Agencies V African Inland Church of Tanzania** 1994 TLR 193 the definition of a

Bill of Costs was provided in order to show that a claim for loss of profits cannot simply be made in a bill of costs.

The main issue to consider in this application is whether sufficient reasons have been provided to justify the presentation of a bill of costs 11 months after the order for costs was made. The application is made under section 14(1) of the Law of Limitation act. It is a requirement under the said provision that reasonable and sufficient cause has to be shown. Taking into consideration the totality of circumstances, it is my view that relocation by Counsel from one building to another did not justify such a delay. Counsel for the applicant argued that the delay was only 9 months in view of the 60 days which the applicant had to file a bill of costs after the court order dated April 12, 2006.

I am of the view that this does not make a difference as the delay of 9 months is also not justifiable. Litigation has to be put to an end.

It will therefore be wrong for me to condone such a delay. In view of that the application for extension of time to file a bill of costs is hereby dismissed with costs.

Sauda Mjasiri

Judge

September 8, 2007.

Ruling delivered in Chambers this 10th day of September 2007 in the presence of Mr. Nuhu Advocate and in the absence of Mr. Ndibalema Advocate.

Sauda Mjasiri

Judge

September 10, 2007.

1,820 words

I Certify that this is a true and correct
of the original/order judgement Ruling
Signature _____
Registrar Commercial Court Dsm.
Date 19/10/07