

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

MISC. COMMERCIAL APPLICATION NO. 190 OF 2021

DRTC TRADING COMPANY LIMITED...APPLICANT

VERSUS

MEXON'S INVESTMENTS LIMITED ... RESPONDENT

Last order: 06th April, 2022
Date of Ruling: 13th May, 2022

RULING

NANGELA, J.

On the 8th day of December, 2021, the Applicant herein filed an application in this Court, by way of a Chamber Summons supported by affidavit of one Emmanuel Marwa. The application was brought under section 93 of the Civil Procedure Code Cap. 33 R.E 2019 and Section 14 of the Law of Limitation Act, Cap. 89 R.E 2019.

The Applicant is seeking for the following orders of the Court:

1. This Honourable Court be pleased to extend time for the Applicant to

apply for the extension of time to file
Bill of costs.

2. Costs of this application be provided for.
3. Any other relief as the court shall deem fit to grant.

On the 15th day of March, 2021, the parties appeared before me and prayed that this application be disposed of by way of written submission. A scheduling order was given, and the parties have duly complied with it, hence this ruling. In terms of appearances, Mr. Emmanuel Marwa, Learned Advocate argued the application on behalf of the Applicant, while the Respondent enjoyed the legal service of Mr. Erick Gebehard Mhimba, Learned Advocate.

Submitting in support of the prayers sought, Mr. Emmanuel Marwa adopted the contents of his supporting affidavit. He submitted that, the extension of time sought by the Applicant is in the discretion of the Court to grant provided that, the Applicant has reasonable cause for his/her delay. Mr Marwa submitted that, the Applicant failed to file the Bill of cost in time after receiving a Notice of Appeal although he admitted as well that the Applicant ought to have filed it within 60 days from the delivery of the decision.

According to Mr Marwa, the Applicant could not continue with the filing and hearing of the Bill of costs while

there was a Notice of appeal and the filling of the memorandum of appeal was on process. He contended that, because a bill of costs is like a normal civil case which involving hearing and determination of it, whenever there is an Appeal to the Court of Appeal every other business must stop.

To drive home his submissions, he cited to me the case of **Noman- Mahboub (T/a Noman al Mahboub General Trading Corporation) vs Milcafe Limited. Commercial Case No. 41 of 2003** (unreported), where Hon. Kimaro, J) as she then was) had this to say, that:

“Taxation proceedings, as the title shows, are before the High Court. Since a Notice of Appeal has been issued, jurisdiction of the High Court has ceased. Taxation is not a matter which has been specifically allowed to proceed even after issuance of a Notice of Appeal to the Court of Appeal. Moreover, the Notice of Appeal given shows that the Respondent was aggrieved by the same decision for which taxation is sought and wants to impugn it in the Court of Appeal. It is improper to proceed with taxation under the circumstances.”

From the above quotation, it was Mr Marwa's submission that, the Court of Appeal laid down a concrete principle that, where a Notice of Appeal is lodge at the Court of Appeal, every other business must stop to pave way for the finalization of that appeal. As such, Mr Marwa was of the view that, the Applicant's failure to file Bill of Costs on time was due to there being an Appeal process initiated by the Respondent.

He surmised that, since the said Appeal No. 91 of 2018 was determined on 16th November 2021, that is why he is now seeking for extension of time to allow the Applicant to file a Bill of Costs, an act which is in the interest of justices and there is all sufficient reasons so far adduced.

In reply to the Applicant's submission, Mr Mhimba, the Respondent's counsel, submitted that, the Applicant's failure to file the respective Bill of costs on the ground that there was served upon her a Notice of Appeal, cannot stand because the said Notice of Appeal did not operate as a bar to the Applicant not to file her bill of cost in time. He further submitted that there is no law which restricts a party from filling a bill of costs in time where there is an appeal.

Mr Mhimba distinguished the **Norman' case** (supra) cited by the Applicant, stating that, the case did not relate to the facts of the case at hand because, in the present case, there

was no bill of costs which was filed, unlike in **the Norman'** case (supra) where proceeding of the reference was stayed to pave way to the finalization of the appeal first.

He further submitted that, the Applicant's failure to file her bill of costs after she was awarded costs amounted to nothing but pure negligence, inaction and afterthought. Mr Mhimba did as well distinguish the rest of the cases cited by the Applicant, arguing that, they did not relate with the material facts of this application. He insisted that, the Applicant failed totally to adduce sufficient reasons to persuade the court to grant her prayer.

Moreover, the Respondent's counsel was of the view that, the Applicant failed to account for each day of the delay. He submitted that, the delay was for about 4 years time from the date when costs were awarded up to when she filed the Bill of costs on Dec-2021.

According to the Respondent's counsel, in those four (4) years, he contended, the Applicant was relaxed. Mr Mhimba drew the attention of this Court to the case of **A-One Products & Brothers versus Abdallah Almas & 25 others**, Civil Application No. 586/2018 of 2017 (unreported) whereby a dismissal order was issued for failure on the part of the Applicant to account on each day of delay.

To conclude his submission, Mr Mhimba submitted that, since the Applicant failed to establish sufficient reasons to warrant this Honourable Court to extend time, this application should be dismissed with costs.

Mr Marwa made a brief rejoinder. He was in agreement with the Respondent's counsel that, granting/refusing an application for extension of time is in the discretion of the court after determining whether there is a sufficient ground or not. He insisted, however, that, in respect of this application, the delay was accounted for since the reason for such a delay was the filing of the Notice of Appeal and the Appeal which was heard by the Court of Appeal.

He further stated that, whenever there is even a notice of appeal, anything concerning that matter should stop. He cited the case of **Damas Assey & Another vs. Raymond Mgonda Paula & others, Civil Application No. 37/17 of 2018** (unreported) to support his contention and, he prayed that, the application be granted.

I have carefully considered the above rival submissions, and the key issue which I am called upon to determine in this ruling, is: **whether this application filed by the Applicant is meritorious.**

It is trite law that, in an application for extension of time, where the Applicant has demonstrated good cause, the

court is warranted to exercise judicial discretion and grant such application. The requirement to demonstrate sufficient cause in an application like the one at hand is emphasized in Order 8 (1) of the Advocate Remuneration Orders GN.No.264 of 2015, which states as follows.

“The High Court may, subject to order 7 extend the time for filing a reference **upon sufficient cause.**”
[Emphasis supplied].

However, before I venture to determine whether the Applicant has established sufficient reason, this Court has asked itself whether it is proper for an Application for extension of time of bill of cost to be filed before the Judge of the High Court.

I had to consider that question *suo moto* because, according to the Order 3 of the Advocate Remuneration Orders G.N 265 of 2015 issues regarding determination of Bill of Costs, once costs are awarded, are dealt with by the Taxing Master. That Order defines the term ‘taxation proceedings’ to mean “*an application for taxation of a bill of costs....*” Moreover, it defines a taxing master to mean:

“ the registrar of the High Court,
Resident Magistrate in Charge of
the Resident Court or a District
Court, other officer of the Court as
the Chief Justice may appoint or such

other officer as the law may provide.”

Form the above provision, there is no doubt that taxation proceedings are normally presided over by a Taxing Officer. However, a party who is aggrieved by the decision of taxing officer may file a reference before the High Court Judge as provided for under Order 7 of the Advocate Remuneration Orders GN.No.264 of 2015.

In the application at hand, the Applicant is praying to be granted extension of time to file a bill of costs out of time. In my view, this application is misconceived as it ought not to have been brought before a Judge but ought to have been filed before the taxing master who, according to the law, has original jurisdiction to determine issues of taxation of costs. It follows therefore, that, even proceedings for extension of time to file a Bill of Costs should be determined by the same Taxing Officer before whom the Taxation proceedings will be brought for determination. See the Case of **Mkombozi Saving Credit vs. CDS Park Limited**, Misc. Civil Appl. No.684 of 2017 (unreported).

Having found that this application ought to have been filed before the Taxing master, I find that this Application is misconceived and was erroneously brought to this forum which has no jurisdiction to grant the orders sought. It should

thus be struck out. In view of that, this Court settles for the following orders that:

- (a) That, the Application at hand is hereby struck out.
- (b) This Court hereby directs the parties to file the application before the appropriate forum.
- (c) In the circumstance of the current application, I make no orders as to costs.

It is so ordered.



[Handwritten Signature]

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DEO JOHN NANGELA
JUDGE,

The High Court of the United Republic of Tanzania
(COMMERCIAL DIVISION)

13/05/2022