

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISC. APPLICATION NO. 188 OF 2022**

(Arising from Commercial Case No. 30 of 2021)

**MS YUKOS ENTERPRISES (E.A.) LIMITED .....1<sup>ST</sup> APPLICANT**

**MAGIRA MAGOMA MASEGESA.....2<sup>ND</sup> APPLICANT**

**VERSUS**


**M/S MAXINSURE (TANZANIA) LIMITED .....1<sup>ST</sup> RESPONDENT**

**M/S CRDB INSURANCE BROKERS LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

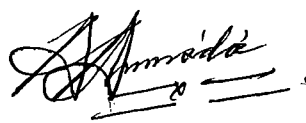
**A. A. MBAGWA, J.:**

This is an application for extension of time within which to file Bill of Costs in respect of Commercial Case No. 30 of 2021 which ended in favour of the applicants. The application was brought by way of chamber summons made under section 14(1) of the Law of Limitation Act and it is supported by an affidavit affirmed by Ganjatu Shabani Kilemile, the applicants' counsel. On the contrary, the application was contested by both respondents via their



respective counter affidavits sworn by Ngassa Ganja Mboje and Ndurumah Keya Majembe, on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively.

The applicants associate the delay with ICT challenges in the Judicial Statistical Dashboard System (JSDS). According to the affidavit, the judgment and decree from which this application arises was delivered on 8<sup>th</sup> April, 2022, as such, the period for filing Bill of Costs was expiring on 6<sup>th</sup> June, 2022. The applicants state that they initially filed the Bill of Costs on 4<sup>th</sup> June, 2022 but the same was rejected and returned on the ground that the font size used was incorrect. They thus corrected the errors and refiled it on 6<sup>th</sup> June, 2022 via JSDS but the filing was not successful due to technical problems in the system. The deponent states that, in pursuit of the matter, he met Hon. Deputy Registrar and reported her the challenges he was encountering but the Deputy Registrar advised him to keep trying. The applicant further states that after several attempts to no avail, he requested leave to file the application manually but the Deputy Registrar resisted. It is further averred that on 28<sup>th</sup> September, 2022 the court officer informed the applicants' counsel that he was supposed to file a fresh application as earlier electronic filing proved futile. As such, the applicants had no other option

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but to file the present application in order to get extension of time before filing a fresh Bill of Costs.

In rebuttal, both respondents filed their counter affidavits to contest the application. Mr. Ngassa Ganja Mboje, in his counter affidavit, stated that the applicants failed to demonstrate sufficient facts that the electronic filing failed because of technical problems in the system. He also lamented that from 6<sup>th</sup> June, 2022 when the applicant allegedly filed the application electronically to 28<sup>th</sup> September, 2022 when he was informed to file a fresh application is a long period which exhibits high degree of negligence.

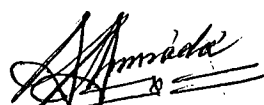
Mr. Ndurumah Keya Majembe, on behalf of the 2<sup>nd</sup> respondent, stated that the electronic printouts which were attached to the applicants' affidavit to prove the alleged unsuccessful electronic filing were not genuine as they were not authenticated.

Upon completion of depositions, this matter was called on for hearing on 21<sup>st</sup> February, 2023. Mr. Omary Ngatada, learned counsel appeared for the applicants whereas the 1<sup>st</sup> and 2<sup>nd</sup> respondents were represented by Jagadi Robert, learned counsel and Ndurumah Keya Majembe, learned counsel respectively.

Submitting in support of application, Mr. Omary Ngatada prayed to adopt the affidavit of Ganjatuni Shabani Kilemile. In a very brief manner, he informed the court that the reasons for delay are contained in the affidavit in particular, under paragraphs 5,6 and 7. He insisted that the applicant's counsel filed the application but the same could not be uploaded due to technical errors in the system. He made reference to annexure Y2 to the affidavit which indicates that the application was initially filed on 4<sup>th</sup> June, 2022. In fine, he prayed the court to consider the grounds advanced in the affidavit and see it fit to grant the application.

In reply, after adopting counter affidavit of Ngassa Ganja Mboje, Mr. Jagadi Robert submitted that the application is devoid of merits and therefore it should be rejected on the grounds set forth in the counter affidavit. He argued that the applicant's counsel has not brought proof that he was told by court officers to wait until the network problem became settled. He added that there ought to be an affidavit of the said court officer. He thus beseeched the court to reject the application with an order of costs.

Mr. Ndurumah, on behalf of the 2<sup>nd</sup> respondent opposed the application as well. He argued that at first the court officer rejected the application because it was prepared in wrong fonts. According to Ndurumah, that is the



requirement of law and the position is that ignorance of the law is not an excuse. He continued that at paragraphs 4,5 and 6, 11, 12 and 13 of the applicants' affidavit, the deponent states how she tried to file the application electronically but the screenshots (printouts) attached to the affidavit are not authenticated in accordance with section 18 of the Electronic Transaction Act. He concluded that the printouts are therefore doubtful.

Mr. Ndurumah also challenged that the deponent mentioned different court officers in her affidavit but the said officers did not swear their affidavits to substantiate the applicants' averments.

Finally, he prayed for dismissal of the application with costs for want of merits.

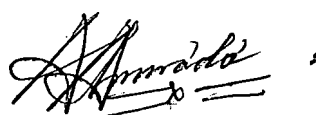
In rejoinder, Mr. Ngatada submitted that under paragraph 6 of the applicants' affidavit, it was clearly stated that the court officers were requested to swear affidavits but they refused. He also argued that after making correction of font size, the applicants refiled the application and they were still within time only that the network was poor.

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With regard to compliance with section 18 of the Electronic Transactions Act particularly on the absence of certificate of authenticity, the applicants' counsel submitted that there is no legal requirement of authenticity.

I have keenly appraised the parties' depositions along with their annexures. I also accorded due consideration to the rival submissions made by the counsel on the hearing date. The relevant issue for determination of this application is whether the applicants have demonstrated sufficient cause to warrant extension of time. Undeniably, there is no fast and hard rule as to what constitutes good cause. Rather, sufficient causes are determined by reference to all the circumstances obtaining in particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar Es Salaam.

In the instant matter, the applicants have demonstrated the strides they made to file the Bill of Costs unsuccessfully. According to the applicants' affidavit, the Bill of Cost was first filed on 4<sup>th</sup> June, 2022 but the same was returned on the basis of wrong fonts. The applicants further state that they corrected the errors and refiled it on 6<sup>th</sup> June, 2022 but the filing hit the rock because of poor network. However, the applicants' evidence is silent on what was going on between 6<sup>th</sup> June, 2022 to 28<sup>th</sup> September, 2022 when the

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applicants were allegedly told to file a fresh application. On the adversary, the respondents resisted the application stating that the application is devoid of merits. Further, the respondents assaulted the applicants on the grounds that the printouts attached to the applicants' affidavit are not authentic and therefore unreliable.

I have assessed the evidence and the obtaining circumstances in whole. It is clear in the applicants' affidavit that the Bill of Cost was first filed on 4<sup>th</sup> June, 2022. It is also undisputed that the judgment in Commercial Case No. 20 of 2021 from which this application is gauged was delivered on 8<sup>th</sup> April, 2022. This is to say that on 4<sup>th</sup> and 6<sup>th</sup> June, 2022 when the applicants attempted to file the Bill of Costs, the applicants were still within the prescribed period of sixty (60) days. Although there are no decisive factors for grant of extension of time, courts have set various considerations which may be taken into account while determining application for extension of time. The factors include 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**


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**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 of 2018, CAT at Dar Es Salaam.

Applying the above considerations in the matter at hand, I found that the length of delay involved was not inordinate and more so, the grant of this application would not cause grave prejudice to the respondents. Additionally, the applicants have demonstrated that from the very beginning, they indicated their determination to file the Bill of costs.

In the circumstances, I am opined that the applicants have exhibited sufficient cause hence the application is meritorious. In the result, I grant the application and allow the applicant to file the Bill of Costs within thirty (30) days from the date of this ruling. Each party should bear its own costs.

It is so ordered.

  
*A.A. Mbagwa*  
**A.A. Mbagwa**  
**JUDGE**  
**22/05/2022**



**Court:** Ruling has been delivered in the presence of Ngassa Ganja, learned counsel for 1<sup>st</sup> respondent who was also holding brief of Mr. Ndurumah Majembe for the 2<sup>nd</sup> respondent and in absence of the applicants this 22<sup>nd</sup> day of May, 2023

