

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.292 OF 2020

(Arising from the decision of the Tax Master In Bill of Cost No. 40 of 2018)

- | | | |
|--|---|-------------------|
| 1. AGGREY GODFREY KIBANGA (As the Administrator
of the Estate of the Late
SEMBE GODFREY KIBANGA | } | APPLICANTS |
| 2. BRAYSON G. DANDA | } | |

VERSUS

- | | | |
|--|---|--------------------|
| 1. NEEMA ISACK KANYAWANA | } | |
| 2. MUARABU SALUM @ SHOSHANGUVE
STAR TRADERS LTD | } | RESPONDENTS |

RULING

S.M KALUNDE, J:-

This ruling relates to an application for extension of time to file a reference against the decision of the Tax Master in **Bill of Cost No. 40 of 2018** delivered on 13th January, 2020. The application is preferred under **Order 8 (1) and (2) of the Advocates Remuneration Order, G.N No. 264 of 2015**. In support of the application the applicants, **AGGREY GODFREY KIBANGA** and **BRAYSON G. DANDA**, filed a joint affidavit.

In response to the application, the respondents, through their learned advocate **Mr. DANIEL HAULE NGUDUNGI**, filed a counter affidavit objecting to the grant of the application and a prayer that the same be dismissed with costs.

Leave of the Court was granted that hearing of the application be conducted through written submissions. Submissions of the applicant were drafted and filed by **Mr. R. Mrindoko**, learned advocate, whilst those of the respondent were drafted and filed by **Mr. Daniel Haule Ngudungi** learned advocate.

In accordance with the affidavit filed in support of the application, the main reason for the appellant's delay in filing the appeal was delay in being supplied with copies of the decision of the Tax Master. According to Mr. Mrindoko the decision of the Tax Master was delivered on 13th January, 2020, immediately thereafter, on 14th January, 2020, the applicant applied for copies of the ruling. Various reminders were sent to the Deputy Registrar. Subsequently, copies of the ruling were supplied to them on 13th May, 2020 and the present application was, eventually, filed on 01st June, 2020.

Mr. Mrindoko added that, in accordance with **Order 6 of the Advocates Remuneration Order, G.N No. 264 of 2015**, the application for reference against the order of the taxing master was supposed to be logged within sixty (60) days of obtaining the copy of the ruling, in his view, when the present application was filed he was well within the prescribed period. He therefore requested the Court to grant the orders sought on account that the applicant acted promptly and diligently in pursuing the matter.

On his part, Mr. Mr. Ngudungi argued that having obtained the copy of the ruling on 13th May, 2020 and filing the present application on 01st June, 2020, the applicant was late for eighteen

(18) days which were not accounted for. It was his view that, having failed to account for everyday of the delay, the applicant had failed to establish good cause for the Court to exercise its discretion in granting the application. To support his view he cited the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

As for the timeline required to lodge an application for reference, Mr. Ngudungi, reasoned that the same should be filed within 21 days of the delivery of the ruling. To support the contention he cited Order 7 (2) of the Advocates Remuneration Order, G.N No. 264 of 2015. In the end, he prayed that the application be dismissed with costs for lack of merit.

In rejoinder, Mr. Mrindoko, argued that the present application was not unreasonably delayed. To support his view, he cited the case of **Michar Kweka vs. John Eliafye** [1997] T.L.R. 152. He pleaded that the application be granted as prayed.

Having considered the submission made by the parties, I will now embark to determine whether the present application is meritorious. As pointed out by both counsels, in accordance with Order 8 (1) and (2) of the Advocates Remuneration Order, G.N No. 264 of 2015, for extension of time to be granted the applicant must show "**sufficient cause**". The order reads:

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

reference upon sufficient cause."
[Emphasis mine]

Although the term sufficient cause has never been defined and it is indeed not practical to have an all-inclusive definition of the same, courts have developed factors to be considered in determining whether there is sufficient cause. These factors were laid down in **Lyamuya Construction Company** (supra) where the Court of Appeal listed the said factors, they include:

- 1. The applicant must account for all the period of delay.*
- 2. The delay should not be inordinate.*
- 3. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- 4. If the Court feels that there are other reasons; such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

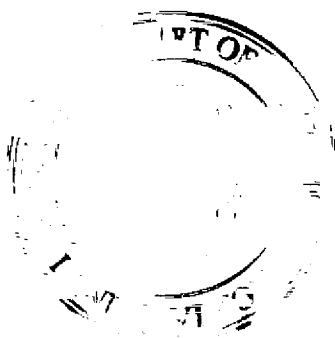
In the present case the applicant main ground was that he was alate in being supplied with the decision of the Tax Master. Whilst the decision of the Tax Master was issued on 13th January, 2020, the ruling was, subsequently, supplied on 13th May, 2020. During this period the applicant could not have filed his application. I am aware that the application was filed on 01st June, 2020, some 18 days after obtaining the copies of the ruling, given that the application was to be filed withing 21 days of obtaining the decision of the Tax Master, I am of the view that the applicant was well

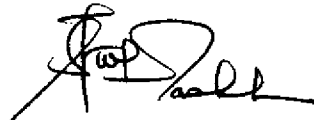
within good times to file the same. I could not find any elements of inaction, sloppiness or negligence on his part.

For the foregoing reasons, I make a finding that the applicant has demonstrated good cause for extension of time. Consequently, I grant the application without costs. The applicant is to file his application within 30 days of obtaining a copy of this decision.

It is so ordered.

DATED at DAR ES SALAAM this 14th day of APRIL, 2021.




S.M. KALUNDE, J.
JUDGE