

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

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 375 OF 2020

CATHERINE SINGUNDALIAPPLICANT

VERSUS

SALIMA AMIR RESPONDENT

RULING

MAIGE, J

Before me is an application for extention of time to file reference against the decision of Taxing Master (Hon. Mahimbali, DR) in Bill of Costs No. 159 of 2016. The said decision was delivered on 30.10. 2018. The application has been preferred under Order 8(1) of the Advocates Remuneration Order, G.N. 263 of 2015 and it is founded on the applicant's own affidavit. The respondent also deposed a counter affidavit to oppose the application.

In this application, the applicant was represented by Mr. Kambamwene, learned advocate whereas the respondent by Mr. Emmanuel Mbuga, also learned advocate. The substance of the application was argued by way of written submissions. I have given the said submissions due consideration in my ruling.

In accordance with the rival submissions, it would appear that, counsel are in agreement that, for an order of extension of time to be granted, the applicant has to demonstrate good cause that prevented him or her from pursuing the intended action within the timeframe. The question that I am called upon to answer therefore, is whether good cause exists to justify extension of time. I am preparing myself to answer the question in negative. I will assign the reasons as I go along.

The application is premised on three main grounds contained in the affidavit. In the first place, the applicant claims that though the decision under discussion was pronounced on 30th October 2018, it was not until on 24th April 2019 when she became aware of the same. Assuming, without deciding, that it is true, there is an interval of more than two years in between the said date and the date of the institution of this matter. Such a period has not, in my reading, been accounted for in the affidavit.

In his submissions, I have observed, the counsel for the applicant associates the delay with prosecution of another proceeding for extension of time which was however struck out, by Hon. Maghimbi, for technical

ground. The issue being factual, it is my view, could not come for the first time from the bar. It ought to have factual foundation from the affidavit. The chamber summons and affidavit initiating the said application in the same way as the ruling striking the same out must have been attached in the affidavit. For, it is a settled law that submissions being mere arguments from the bar cannot be used to address factual issue.

Yet, the applicant relies, in paragraph 7 of affidavit, on illegality as a ground for extension of time. The relevancy of illegality as a ground for extension of time is not in question. The contention is whether such element has been established. In his submissions, Mr. Kambamwene has pinpointed two elements of illegality. First, the Bill of Costs was filed out of time. Two, the award of the Bill of Costs violated the provision of paragraph 40 of the Order in that the award was made despite the fact that more than one-sixth of total amount of bill of costs is allowed.

In his rebuttal submissions, Mr. Mbuga has urged the Court to ignore the alleged illegalities on account that, they have just been listed without being substantiated. The counsel placed reliance on the authority in **MOSSES MCHUNGUZI VS. TANZANIA CIGARATTE CO. LTD, CIVIL REFERENCE NO. 3 OF 2018** wherein the Court of Appeal observed;

"It must be made clear that in order for the Court to rely on the issue of illegality as one of the reasons for seeking extension of time, the party must not only list it as one of the grounds for

seeking extension, but must also establish and explain sufficiently to deserve extension of time”.

He submitted further relying on the authority in **ALLY AZIM DEWJI AND 4 OTHERS VS. KIMONI DIMITRI MATHEAKIS, MISC. LAND APPLICATION NO. 360 OF 2019**, that the alleged illegality are not apparent on the face of the record. as required.

In paragraph 7 of the affidavit, I have noted, the applicant just alleged illegality without listing any of them. In his written submissions that, the applicant through his counsel has pinpointed the two elements and made a general account. Surprisingly, neither of the grounds have factual foundation in the affidavit. In the first point, the applicant claims that the bill of costs was filed out of time. When was the bill of costs filed, the affidavit is silent.

The applicant has also not attached any copy of the application for bill of costs in her affidavit. In the absence of that, there is no factual basis on which this Court may imply that the bill of costs was filed out of time. The same applies to the second element.

The counsel for the applicant has invited the Court to have a look into the record of the bill of costs. The application before me is however not the reference itself. It is a mere application for extension of time to apply for the same. The record is thus not formally before me.

For the foregoing reasons therefore, it is apparent that the affidavit has not demonstrated any sufficient cause that would justify the delay to prefer the intended reference within time. As a result, therefore, the application is dismissed with costs.

It is so ordered.



A handwritten signature in black ink, appearing to read "I. Maige".

I. MAIGE
JUDGE
26/02/2021