

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

**MISC. CIVIL APPLICATION NO. 594 OF 2021
(Originating from Land Case No. 105 of 2020)**

**NAHLA DEVELOPMENT LTD.....APPLICANT
VERSUS**

ANSELINE AMIRI MRISHO.....1ST RESPONDENT

AMINA AMIRI MRISHO.....2ND RESPONDENT

SOPHIAA AMIRI MRISHO.....3RD RESPONDENT

ABDALLAH H. ABEID T/A TAMBAZA AUCTION

MART AND GENERAL BROKER.....4TH RESPONDENT

Date of Last Order: 7/12/2021

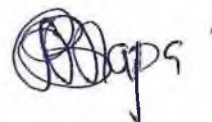
Date of Ruling: 22/12/2021

RULING

MKAPA, J:

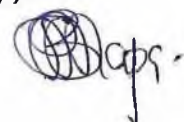
The Applicant has moved this Court by way of Chamber Summons pursuant to section 14 (1) of the Law of Limitation Act, 1971 Cap 89 [R.E 2019] and section 95 of the Civil Procedure Code, (CPC) Cap 33 [R.E 2002] seeking for extension of time to file out of time Bill of Costs in respect of a Ruling by this Court (**Dr. Mango J.**) in Land Case No. 105 of 2020 dated 23rd April, 2021.

When this application was set up for hearing Mr. Castor Rweikiza learned advocate appeared for and represented the applicant while the 3rd and 4th respondents respectively, had the services of Mr. Stanslaus Halawe also learned advocate. The 1st and 2nd respondents did not appear despite being duly notified the date of hearing hence, the court ordered the hearing to proceed ex-parte on their part.



Submitting in support of the application Mr. Rweikiza counsel for the applicant firstly acknowledged the fact that, the law requires an application for a Bill of Costs to be filed within 60 days from delivery of a judgment or ruling. That; in the instant matter the same was to be filed in Court on or before 23rd June 2021. He went on submitting the reasons for the delay in filing the Bill of Costs as deponed under paragraphs 2, 3, and 4 of the applicant's affidavit being non -availability of the applicant due to frequent travel for business affairs both abroad and locally, as the applicant was a Managing Director and majority shareholder. Also frequent travel involved medical treatment as evidenced in Annexure NLD2. Mr. Rweikiza narrated the following applicant's itinerary viz; (25th March 2021 UAE); (31st March, 16th April 10th and 14th July 2021, Lebanon for medical treatment where he was admitted at Clemension Medical Centre between 25th February and 15 July 2020); (28th May and 28th June 2021, Rwanda); (2nd, 4th and 13th June 2021, Ivory Coast); (29th September and 1st October, 2021 Mwanza and Arusha respectively);

It was Mr. Rweikiza's further submission that another main reason for failure to file the Bill of Costs timely is that, while in the country it was difficult for the applicant to communicate with one of his legal counsels Mr. Castor Rweikiza for the purposes of giving him instructions. This was due to the fact that Mr. Rweikiza also was a frequent traveller. He narrated the incidents on 10th May 2021 when Mr. Rweikiza had to travel to Bukoba to attend burial ceremonies of relatives the late Dr. Msola who passed away on 10th May 2021, Ms. Nyangula, (Mr Rweikiza's grandmother) who died on 15th October 2021, as well as Paulina Rwegogira who died on 20th September 2021). He annexed burial ceremonies photos in support. (Annexure NDL3 collectively).



It was Mr. Rweikiza's view that, the reason of non-availability for the purposes of attending to a sick relatives who later, passed away is sufficient reason for granting of extension of time. To support his argument he relied on the decision in the case of **Regional Manager TTCL V. Othman Mbarouk and 21 Others, Civil Application No. 4 of 2012 CAT at Zanzibar** where the Court held;

"extension of time is a discretion of the Court depending on the circumstances of the case provided good cause is proven and further that good cause is never limited."

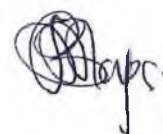
Additionally, he cited the case of **Sadru Mangalji vs Abdul Aziz Lalani & 2 Others, Misc. Commercial Application No. 126 of 2016**.

Finally he prayed for the application to be granted.

In response Mr. Halawe counsel for the 3rd and 4th respondents submitted that, despite the fact that the respondents had already filed their counter affidavit, having heard reasons for extension of time as advanced by the counsel for the applicant such as illness and death, he conceded to the application, while leaving costs of the application to be determined by the Court. There was no rejoinder.

Having heard counsel for parties' submissions the main issue for determination is whether the applicant has shown sufficient cause to warrant this court to exercise its discretionary powers to extend time.

It is well settled that, as a general rule an application for extension of time places a duty on the applicant to satisfy on the following key factors as propounded in the landmark case of **Lyamuya Construction**




Company Co. Limited V. Board of Trustees of the Young Women Christian Association, Civil Application No. 2 of 2010, namely;

- (i) The applicant must account for all period of delay,
- (ii) The delay should not be inordinate,
- (iii) The applicant must show diligence and not apathy, negligence or sloppiness in prosecution of the action that he intends to take, and
- (iv) If the Court feels that there are other sufficient reason such as the existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged.

Guided by the above principle it is plain clear that for an application for extension of time to be considered by the Court, applicant has to show good cause and further that, not only there has to be sufficient reasons for the delay but the reasons have to be sufficient enough to extend time **[see;] R. Yona Kaponda & 9 Others [1985] T.L.R 84**

In the instant application the applicant did acknowledge the fact that, it is a legal requirement for an application for a Bill of Costs to be filed 60 days from the date of delivery of a judgment or ruling as the case may be. He further acknowledged the fact that, the instant application was supposed to be filed on or before 23rd of June 2021. However, the applicant did not comply instead, filed this application on 28th October 2021 (120 days later).

The main reason for non-compliance as averred by the applicant was due to non-availability of the applicant occasioned by frequent travel abroad and locally for business purposes and sometimes for medical reasons. Furthermore, while back in the country his counsel was

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attending to sick relatives and burial ceremonies as evidenced by paragraph 5 (ii) of the applicant's affidavit which states;

"..... That, sometimes on different occasions and dates as indicated on my passport when I returned to Tanzania and tried to call my lawyer one Castor Rweikiza, sometimes he was informing that he had travelled upcountry for burial ceremonies or sometimes he was at hospital attending his sick relatives"

To support his argument he annexed copies of applicant's passport, medical chit, bus tickets and pictures of burial ceremonies.

Although the counsel for the 3rd and 4th respondents conceded to the application, my thorough perusal of the attachments in support of the application while being guided by the principle enunciated in the case of **Lyamuya** (*supra*) has generally revealed that, the applicant has miserably failed to account for each of the 120 days of delay, which in my view is inordinate as was held in the decision in **Bushiri Hassan V. Latifa Lukio Mashayo, Civil Appeal No. 3 of 2007** (unreported) in which the Court emphatically held;

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing period within which certain steps has to be taken"

Guided by the above authority, in order to avoid abuse of Court procedure, In **Salome Musa Lyamba V. K. K (T) Ltd Labour Division 2012 LCCD 198**, the Court had this to say;

".....no valid reason in granting this application as it would amount to an abuse of the Court procedures, that limitation is there to ensure



*that **a party does not come to court as and when he chooses***

[Emphasis added]

For the reasons discussed above, I am satisfied that, the applicant has failed to demonstrate sufficient cause worth granting extension of time by this court for failure to account for each day of delay. Consequently, the application is dismissed with costs.

It is so ordered.




S. B. MKAPA
JUDGE
22/12/2021