

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

MISC. LAND CASE APPLICATION NO 94 OF 2021

(Arising from Land Application No.671 of 2019)

PROF. NGILA MWASE..... APPLICANT

VERSUS

KYABUKOBA MUTABINGWA.....1ST RESPONDENT

GIVEN MUHINA.....2ND RESPONDENT

Date of Last Order: 18.10.2021
Date of Ruling 06.12.2021

RULING

V.L. MAKANI, J

This application is by NGILA MWASE. He is applying for extension of time within which to file an application for reference out of time against the decision in Misc. Application No.671 of 2019 (Bill of Costs) delivered on 12/12/2020 (Hon. S.H. Wambili, Chairman)

The application is made under section 8(1) and (2), of the Advocates Remuneration Order, 2015 and is supported by affidavit sworn by the applicant.

Mr. Aretas Kyara drew and filed submission on behalf of the applicant. The submissions in reply were drawn and filed by Mr. Herieli Munisi, Advocate on behalf of respondents.

Supporting the application, Mr. Kyara prayed to adopt the contents of the applicant's affidavit. He said that the impugned ruling was delivered on 14/12/2020. That on 14/12/2020 he applied for the certified copies of the ruling (**GA1**). That he was not supplied with the copies and on 01/02/2021 he sent a reminder letter to the Tribunal (**GA2**). That the said copies were supplied to him on 05/02/2021, that is 53 days from the date of ruling. That the law provides for reference to be filed within 21 days. That the delay to file the reference was attributed by Tribunal's delay in supplying the applicant with the copies of the ruling. He added that the said decision was obtained by mere opinion of the trial Chairman assuming the costs incurred by respondents without considering evidence. He prayed for the application to be granted.

In reply, Mr. Munisi prayed to adopt the contents of his counter affidavit. He said that an application for extension time is usually

granted if the applicant has established sufficient reasons. He said that the applicant did not apply within time to be supplied with copies of the ruling. That the applicant filed his request letter before 28/01/2021 as per **GA1** which is a payment receipt to the tribunal for letter requesting copies of the decision. That the said receipt was issued by Nighty Merry Milli with control number 991173849426.

He said that the applicant firstly requested for the copies on 28/01/2021 and a reminder letter was filed on 05/02/2021 (**GA2**). That the applicant is lying as he did not make a formal request on 16/12/2020 as alleged. He argued the Court to disregard the applicant's affidavit as it is lying and relied on the case of **Ignazo Masima vs. Willow Investment Spri, Civil Application No.21 Of 2001 (Cat-Dsm)** (unreported). That legal receipt is a proof that a document has been filed in Court. He insisted that the applicant has failed to account for 45 days delay. That the applicant has alleged fraud in the impugned ruling but did not state elements of the alleged fraud. Counsel prayed for dismissal of the application with costs.

In rejoinder, Mr. Kyara reiterated his main submissions and added that production of a receipt is convenience of the Tribunal. That even

respondents Counsel who is a long practising advocate knows that you can lodge document and the same be received by the Tribunal and still you will be issued with receipts in the later days.

I have gone through the affidavits and the submission by the parties. The main issue for determination is whether the applicant has adduced sufficient reasons to warrant extension of time to file the application for reference.

An application for extension of time is entirely the discretion of the court to grant or refuse it, and it may only be granted where it has been sufficiently established that the delay was with sufficient cause.

(See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported)).

It is on record that the impugned ruling was delivered on 14/12/2020. The request letter (Annexure **GA1**) is dated to have been received by the Tribunal on 16/12/2020. That was two days from the date of ruling. However as alleged by Mr. Munisi the EFD receipt shows that the payment of the said request letter was made on 28/01/2021. The discrepancy between the date in which the request letter was

received and the date in which the payment was made is now an issue between the parties. The point to note is that the Tribunal's seal which evidenced that the request letter was received is dated 16/12/2020 and this is not at issue between the parties. Even in his reminder letter which was received by the Tribunal and date stamped 05/02/2021, the applicant insists that he had requested for copies of the decision from the Tribunal vide a letter dated 16/12/2020. It is my view that the discrepancy on the dates when the request letter was received and the date of payment should not be used at the expense of the applicant. The most important thing is that the applicant did not stay idle as he immediately applied for the copies of the ruling. Further, if there was fabrication on the part of the applicant as alleged by Mr. Munisi, then the applicant would have hidden the receipt as it does not favour him. The act of attaching it means that he did it honestly knowing that he filed the request letter on time. It is uncontested that the copies were supplied by the Tribunal on 05/02/2021 when the applicant was already out of time to file the reference. It is on record that he applied for the copies on 16/12/2020, two days after the delivery of the ruling. Therefore, such delay was attributed by the Tribunal. In the case of **Rajabu Zahuya**

**vs. Mkonge Hotel Ltd, Revision No.26 of 2013 (HC Labour
Division -Tanga)** it was stated that:

"...what is required for the decision maker in such application is to assess whether the reasons advanced would have prevented reasonable person from acting timely"

In my view, the reasons of delayed copies prevented the applicant from filing his application on time and therefore he deserves extension of time. As stated before, the applicant did not stay idle, because soon after the impugned decision was delivered, he applied for the copies, but there was a delay by the Tribunal to supply the copies within time.

For these reasons and basing on the discretionary powers mandated to the court, I proceed to grant this application for extension of time. The applicant is to file his application for reference within 30 days from the date of this ruling. Each party to bear own costs.

It is so ordered.


V.L. MAKANI
JUDGE
06/12/2021

