

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

MISC. LAND APPLICATION NO. 343 OF 2021

HITECH SAI HEALTH CARE CENTRE LIMITED.....APPLICANT

VERSUS

JOSHUA MWAITUKA T/A

RHINO AUCTION MART.....1ST RESPONDENT

JAYANTILAL NAGINDAS MEISURIA2ND RESPONDENT

Last Order: 19/01/2022

Ruling date:07/03/2022

RULING

MANGO, J

The Applicant, Hitech Sai Health Care Limited prays for extension of time to file a Reference Application against the decision of the Court in Bill of Cost Application No. 57 of 2019. The Application is by way of chamber summons made under section 14 (1) of the Law of Limitation Act and sections 93 and 95 of the Civil Procedure Code (Cap. 33 R.E 2019). The

Application is supported by an affidavit sworn by Catherine Solomon the Director of the Applicant Company.

The Application is contested by the Respondents who filed a joint counter affidavit to that effect. The Applicant was represented by Catherine Solomon, learned advocate while the Respondents were represented by Johnstone Fulgence learned advocate.

On 15/09/2021, the Court ordered the Application to be argued by way of written submissions. I am grateful to learned advocates who represented parties in this appeal for their compliance with the schedule of submissions.

In her submission in support of the application, the Applicant's counsel adopted the contents of the affidavit filed in support of this application to form part of her submission in chief. She submitted further that, the Applicant's delay to file Reference Application was contributed by two reasons, lack of knowledge on existence of the proceedings and ruling of the Bill of Costs Application No. 57 of 2019 and the Applicant's attempt to set aside the ex-parte ruling in the Bill of costs Application. She also mentioned the issue of illegality though not expressly raised as a ground for extension of time.

On lack of knowledge pertaining to existence of the ruling in the Bill of Costs Application No. 57 of 2019, learned counsel for the Applicant argued that, the Applicant became aware of the ruling in the Bill of Costs Application on 21st October 2020 when he was served the Application for execution. The ex parte ruling was delivered on 8th June 2020. Citing, Rule 7(2) of the Advocates Remuneration Order 2015, she submitted that, the Applicant ought to have filed his reference application within 21 days from the date of the decision. However, the Applicant could not file a Reference Application within the period fixed by the law because he was not aware of the proceedings and ruling issued against him in the Bill of Costs Application.

On the Applicant's attempt to set aside the ex parte order in Bill of Costs Application No. 57 of 2019, the Applicant's Counsel submitted that, it is well settled that once an ex-parte order is in place, the offended party has no option other than to set it aside under provisions of order IX Rule 9 of the Civil Procedure Code. She referred the Court to the decision of the Court of Appeal of Tanzania in the case **of The Government of Vietnam Versus Mohamed Enterprises(T) Ltd** Civil Appeal No. 122 of 2005, Court of Appeal of Tanzania at Dar es salaam. With regard to this matter, the learned counsel submitted that, immediately after the Applicant found out about the

existence of the ex parte decision in Bill of Costs Application No. 57 of 2019, the Applicant filed Application No. 615 of 2020 through which the Applicant unsuccessfully prayed for extension of time to set aside ex parte order in the Bill of Costs Application. The ruling in Application No. 615 of 2020 was delivered on 6th May 2021 and copy of the ruling was availed to the Applicant on 12th July 2021. The Applicant filed the Application at hand on 14th July 2021, only two days after he obtained the copy of ruling in Application No. 615 of 2021.

The learned counsel argued further that, the bill of costs has been granted without any legal justification, as there is no single proof by receipt or any other proof of the costs awarded in the Bill of Costs Application No. 57 of 2019.

In his reply submission, the Respondents' counsel adopted the contents of the counter affidavit to form part of his submission. The learned counsel is of the view that the Application at hand is unmeritorious as the Applicant did not account for his delay with any sufficient cause. He argued that, the Applicant ought to have accounted for the delay from 21st October 2020 when he became aware of the ex parte ruling against him to 14th July 2021 when he filed this application. He argued that, the Applicant failed to

account for his delay with any sufficient cause. He cited the case of **Benedict Mumero Versus Bank of Tanzania**, Civil Appeal No. 12 Of 2002 Court of Appeal, of Tanzania at Dar es salaam in which the Court of Appeal held that, extension of time may be granted where the Applicant has established sufficient cause for the delay. According to the Respondent's counsel the Applicant delay to file reference Application was caused by his refusal of service as evidenced by the affidavit of the Court process server one Mwamvua A. Kigalu t/a Igalula Auction Mart attached to the Respondents' joint Counter affidavit. On the delay to obtain a copy of ruling in Misc. Application No. 615 of 2021, he argued that the ruling had no connection with the Application at hand thus, the Applicant cannot rely on the same as the reason for his delay to file this application.

In her rejoinder, the Applicant's counsel reiterated her submission in chief and submitted further that, the ruling in Misc. Application No. 615 of 2021 was necessary for this Application as she wanted to attach its copy in this application to account for the period the Applicant has spent in prosecuting the same.

I have considered submission by both parties. I agree with the learned Advocates for both parties in this application that, extension of time is a

discretion of the Court and the legal requirement that such discretion need to be exercised judiciously. The main issue that courts consider in Applications of this nature is whether the Applicant managed to account for the delay to seek the intended remedy with good reason(s). In my considered view, Applicants for extension of time to pursue a legal remedy need to establish good and sufficient reason(s) to warrant the Court to grant the applications.

In the application at hand, the Applicant managed to account for the delay between 8th June 2020 to 21st October 2020 as time he was not aware of the ex parte order against him. The period between 27th October 2020 to 6th May 2021 as time spent prosecuting Misc. Land Application No. 615 of 2020.

The Applicant did not account for the delay between 6th May 2021 to 13th July 2021 when he filed this Application. As correctly submitted by the counsel for the Respondents the issue of waiting for a copy of ruling of Misc. Land Application No. 615 of 2020 cannot be considered to be a good ground for extension of time as there is no legal requirement of attaching the ruling in this Application.

On the alleged lack of legal justification on the amount taxed, the Applicant did not mention any illegality in the decision of the taxing master in the Bill of costs Application No. 57 of 2019. The Applicant merely alleged that the award of Tshs **25,000,000** by the taxing master is unjust and without legal basis. She did not expound her submission as to which provisions of the Advocates Remuneration Order have been contravened to warrant this Court extend time on ground of illegality. In order for the Court to grant applications for extension of time on the ground of illegality, the alleged illegality must be clearly visible on face of record as it was held in the case of **Moto Matiko Mabanga versus Ophir Energy PLC and others**, Civil Application No. 463/01 of 2017 Court of Appeal of Tanzania at Dodoma.

In such circumstances, I find the Applicant to have failed to account for his delay to file the reference application with good reason(s) and I hereby dismiss the Application. Given the need to have finality in adjudication of disputes, I do not award costs.

Dated at Dar es salaam this 7th day of March 2022


Z. D. MANGO
JUDGE