

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.515 OF 2022**

(Arising from the Bill of Costs No. 78 of 2020 of the High Court of Tanzania –
Land Division dated 31st May, 2022 by Hon. W. A. Hamza, Taxing Master)

DR. PHILLIP ALLAN LEMA APPLICANT

VERSUS

PETER TEGEMEA NDATELE RESPONDENT

RULING

Date of last Order: 21.09.2022

Date of Ruling: 22.09.2022

A.Z.MGEYEKWA, J

I am called upon by the applicant to grant extension of time to lodge an application for reference before this Court against the decision of Hon. W. A. Hamza, Taxing Master in Bill of Costs No. 78 of 2020. The application is preferred under section 8 (1) and (2) of the Advocates Remuneration Order

2015 (GN. No. 264 published on 17th July, 2015). The affidavit is supported by two affidavits deponed by Dr. Phillip Allan Lema, the applicant and Mr. Henry Joseph Mboya, learned counsel for the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deponed by Mr. Peter Tegemea Ndatele, the respondent.

When the matter was called for hearing on 21st September, 2022, the applicant enlisted the legal service of Mr. Thomas Massawe, learned counsel whilst the respondent appeared in person, unrepresented.

In support of the application, Mr. Massawe urged this court to fully adopt both affidavits and annexures attached to the application to form part of his submission. He stated that the applicant is praying for an extension of time to lodge a reference before this Court against the decision of Hon. W. A. Hamza, Taxing Master in Bill of Costs No. 78 of 2020. Mr. Massawe went on to submit that the applicant and his advocate made several follow-ups to obtain copies of the Judgment to no avail. It was his view that they were not negligent and the delay was out of their control.

On the strength of the above submission, the learned counsel for the applicant beckoned upon this Court to grant the applicant's application with costs.

In reply, the respondent urged this Court to adopt the counter affidavit to form part of his submission. The respondent was brief and straight to the point. He valiantly submitted that the applicant and his counsel did not make any follow-up to collect the copy of the impugned decision. He stated that the decision was delivered on 4th July, 2022 and he received it within time.

In conclusion, the respondent urged this court to dismiss the application with costs.

In his rejoinder, Mr. Massawe reiterated his submission in chief. Stressed that the applicant and his counsel took extra efforts to obtain the said copies, therefore, they were not negligent. He urged this court to grant the applicant's application.

I have carefully considered the submissions made by the learned counsel for the applicant and the respondent in their oral submission and I have examined the affidavit and counter-affidavit, I find the issue for determination is, *whether the applicant adduced sufficient reasons for the delay to file a Notice of Appeal.*

It is trite law that the decision to refuse or grant an extension of time is entirely at the discretion of the Court. The discretion is exercised judiciously according to the rules of reason and justice, and consistent with the holding in the case of **Mbogo v Shah** [1968] EA 93, quoted with approval in **Ngao Godwin Losero v. Julius Mwarabu**, CAT-Civil Application No. 10 of 2015 (unreported). Therefore, the applicant needs to satisfy the Court by presenting a credible case and sufficient or good cause. What amounts to a sufficient or good cause has been discussed in numerous cases including the Court of Appeal of Tanzania in the case of **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 and (all unreported) and **Farida Ahmed Mbaraka v Domina Kagaruki & Others**, Civil Reference No. 14 of 2019 [TANZLII 20th October, 2021].

In the instant case, the applicant's main reason for the prayer of extension of time is because he obtained the copies of the impugned decision out of time. I have perused the affidavits and noted that the applicant in paragraphs 3, 4, 5, 6, 7, and 8 has demonstrated the reasons for delay whereas he stated that he was informed by his counsel that after several

follow-ups and efforts taken to write a letter requesting for copies of the ruling and two reminder letters dated 16th June, 2022 and 18th July, 2022 and Mr. Mboya, counsel for the applicant received the said copy on 19th August, 2022. The counsel in his affidavit stated that on 16th June, 2022 to support his submission he referred this Court to Annexure PL2.

Moreover, the records reveal that the applicant instructed his counsel to file a letter requesting for a certified Ruling and after several follow-ups, Mr. Mboya obtained the certified Ruling on 19th August, 2022 and noted that the same was certified in July, 2022. The applicant on paragraph 8 of his affidavit stated that immediately after receiving the said copies and from 20th August, 2022 to 30th August, 2022, his counsel prepared the instant application which was filed before this Court on 31st August, 2022. In my considered view, I find that the Mr. Massawe submission and the attached documents substantiated the applicant's and his counsel's averments in the supporting affidavits.

In sum, I am convinced that the applicant and his counsel have presented a credible case sufficient to convince the Court to grant an extension of time. Accordingly, the application succeeds and the applicant is given 21 days

within which to institute the application for reference from the date of this Ruling.

Order accordingly.

Dated at Dar es Salaam this date 22nd September, 2022.

 A.Z. MGEYEKWA
JUDGE
22.09.2022

Ruling delivered on 22nd September, 2022 via audio teleconferencing whereas Mr. Thomas Massawe, learned counsel for the applicant and the respondent were remotely present.

 A.Z. MGEYEKWA
JUDGE
22.09.2022