

**THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO.446 OF 2022**

(Originating from Bill of Costs No.169 of 2021)

**MBARAKA MIRAJI ..... 1<sup>ST</sup> APPLICANT**

**SALAMA MIRAJI ..... 2<sup>ND</sup> APPLICANT**

**MAGNUS M. MHICHE ..... 3<sup>RD</sup> APPLICANT**

**VERSUS**

**OMARY HAMISI UNGAUNGA ..... RESPONDENT**

**RULING**

*Date of last Order: 22.09.2022*

*Date of Ruling: 22.09.2022*

**A.Z.MGEYEKWA, J**

In this application, the Court is being asked to extend the time within which to file an application for reference against the decision of the Taxing Master in Bill of Costs No. 169 of 2021. The application has been preferred under the provisions of Order 8 (1) and (2) of the Advocates Remuneration Order,

GN. No. 263 of 2015. The application is supported by a joint affidavit deponed by Mbaraka Miraji, Salama Miraji, and Magnus Mhiche, the applicants. 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 Omary Hamisi Ungaunga, the respondent. The application stumbled upon preliminary objections from the respondent. He has raised one point of preliminary objection that:-

*“The applicants' affidavit supporting the Application is irreparably defective for containing matters of hearsay without stating the grounds thereof contrary to the provision of Order XIX Rule 3 (i) of the Civil Procedure Code, Cap. 33.*

In support of the objection, the respondent had not much to say he claimed that the applicant's application is defective because it contain hearsay information. He argued that the legal assistant is the one who informed the applicants that they were out of time hence they have to file an application for an extension of time before filing a reference before this Court. He added that the applicants in their verification clause stated that all that is stated in their paragraphs are true to the best of their own knowledge while it is not true.

Submitting in support of the application, the 1<sup>st</sup> applicant urged this court to adopt their affidavit to form part of their submission. The 1<sup>st</sup> applicant submitted that they have filed the instant application for an extension of time because they delayed obtaining the copy of the impugned ruling. She stated that they received the copy on 13<sup>th</sup> July, 2022 but she did not understand the language, thus, she asked the Deputy Registrar of the High Court – Land Division who informed her to file an application for an extension of time.

In reply to the objection raised by the respondent, the 1<sup>st</sup> applicant was brief and focused. She argued that their affidavit is not defective, they found themselves out of time to file a reference hence they were informed by the Deputy Registrar to file an application for an extension of time.

Submitting in support of the application, the 1<sup>st</sup> respondent valiantly opposed the application. He contended that the applicants were negligent. He stated that the ruling was delivered on 8<sup>th</sup> June, 2022 and the copies were ready for collection on 9<sup>th</sup> June, 2022 and he collected the said copy within time. He lamented that the applicants are filing endless applications or extension of time as the result they are delaying him to enforce his rights. Ending, he urged this Court to dismiss the application with costs.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the appeal. That is the practice of the Court founded upon prudence which I could not overlook.

In determining the raised objection, I had to go through the applicants joint affidavit which was taken on 2<sup>nd</sup> August, 2022, the applicants' affidavit specifically paragraph 5 reads:-

*“.. the applicant started seeking legal advice from the Legal Aid and Human Rights Center in which an officer of the center told us that the time to file reference has expired...”*

From the above excerpt, it is clear that the paragraph contains hearsay evidence. It is a legal requirement that any affidavit made on information must state the source of the said information, either as a whole or in any particular paragraph, to state the facts deposed to or any of them and if so which ones, are true to the deponent's knowledge or as given by his client or are true to his information and belief. Short of that renders the affidavit defective and incompetent. In the instant application I have found that the applicants did not acknowledged receiving the information which formed part of their affidavit, they were supposed to state or acknowledge the source of information in their verification clause. In the case of **Standard Goods**

**Corporation Ltd. v Harakchand Nathu & Co** [1950] EACA 99 it was held that:-

*“ It is well settled that where an affidavit is made on information, it should not be acted unless the source of information is specified.”*

Equally, in the case of **Premchand Raichand Ltd and another v Quarry Service of East Africa Ltd and others** [1969] 1EA 514, it was held that:-

*“ The affidavit in support of the application did not disclose the source of the information contained in them and should have been disregarded.”*

Guided by the above authorities, I have found that the verification clause is defective. However, the remedy is to expunge the offensive paragraph therefore I proceed to expunge paragraph 5 which contains hearsay evidence from the affidavit. After expunging the said paragraph, I find that the remaining paragraphs are proper and the applicant's affidavit suffices to support their application. Therefore the objection is partly allowed to the extent explained above without costs.

Coming to the crux of the matter, the issue which is the bone of contention in this Application is *whether or not the applicants have adduced sufficient reasons to move this Court to grant their application for an extension of time to file reference out of time.*

It is trite law that in an application for an extension of time the applicant is required to account for each day of delay. In the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019.

Encapsulated in the applicant submission and per the applicants' affidavit, the ground for his delay is that they delayed obtaining the copies of the impugned decision. The governing legislation in the matter at hand is the Advocates Remuneration Order GN. 264 of 2015 in particular Order 7 (1) and (2) which provides that:-

*" 7 (1) Any person aggrieved by a decision of the Taxing Officer, may file reference to a judge of the High Court*

*(2) A reference under (1), shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days of **from the date of the decision.**" [Emphasis added].*

Counting the days from the date when the Bill of Costs No.169 of 2021 was delivered on 8<sup>th</sup> June, 2022 to the date when the applicant filed the instant application on 3<sup>rd</sup> August, 2022, is a lapse of approximately 32 days. The applicants' main reasons for the delay to file the reference is that they delayed collecting the copies of the Ruling. In paragraphs 2, 3, 4, 6, and 7

the applicants have shown efforts taken in filing their application for reference unfortunately they found themselves out of time. After receiving the copies of the impugned ruling on 13<sup>th</sup> July, 2022, they were already out of time and they started to seek legal aid in preparing the application at hand. On 2<sup>nd</sup> August, 2022 the instant application was availed to them and they filed the same on 3<sup>rd</sup> August, 2022. In my considered view, I noted that the applicants were caught in a situation where they tried to pursue their rights by filing a reference before this court within time, however, they found themselves unaware of the process of the machinery of justice.

For the aforesaid reasons, I allow the applicants to file a reference out time within 45 days from today.

Order accordingly.

Dated at Dar es Salaam this date 22<sup>nd</sup> September, 2022.

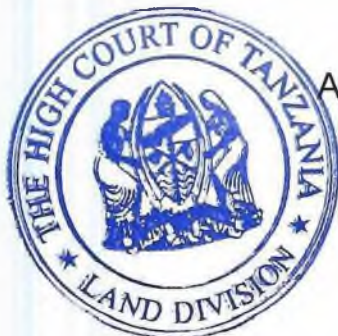


A.Z.MGEYEKWA

JUDGE

22.09.2022

Ruling delivered on 22<sup>nd</sup> September, 2022 via video conferencing whereas both parties were remotely present.



A.Z.MGEYEKWA

JUDGE

22.09.2022