

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 611 OF 2022

**(Arising from the ruling of Taxing Master in Application for Bill of Costs No.
822 of 2020)**

HUSSEIN MWINYI MPETA 1ST APPLICANT

ALEX MSAMA MWITA 2ND APPLICANT

VERSUS

CASA DEL SOL LIMITED RESPONDENT

RULING

Date of Last Order: 18.10.2022

Date of Judgment: 19.10.2022

A.Z. MGEYEKWA, J

This ruling is in respect of an application for an extension of time to file a Reference out of time against the decision of the Taxing Masters in Taxation Cause No. 822 of 2020. The application is preferred under the provisions of Order 8 (1) and (2) of the Advocates Remuneration Order,

GN. No. 264 of 2015. The application is supported by a joint affidavit affirmed by Mr. Hussein Mwinyi Mpeta and Alex Msama Mwita the applicants. The applicant has set out the grounds on which an extension of time is sought. The application has met opposition, fielded by the respondent, through his counter-affidavit deponed by Mr. Francis Walter Mchomvu, the counsel for the respondent in which allegations of adducing sufficient reasons are valiantly denied.

When the matter was called for hearing on 18th October, 2022 the applicant enlisted the legal service of Mr. Rajabu, learned counsel whereas the respondent enjoyed the legal service of Mr. Francis Walter, learned counsel.

Submitting for the applicant was Mr. Rajabu urged this court to adopt his affidavit to form part of his submission. The learned counsel's submission was premised on what is stated in the supporting joint affidavit. The learned counsel for the applicant submitted that the Taxing Master taxed in costs of Tshs. 16,284,000/=. To fortify his submission he referred this Court to the attached annexure HA-1. The counsel for the applicants went on to submit that they applied for copies of the impugned Ruling and received the copies on 17th October, 2022. To support his submission he referred this Court to annexure HA-4.

Mr. Rajabu continued to submit that the certificate impugned ruling was availed to the applicant on 20th September, 2022 a lapse of 41 days after the delivery of the ruling. To buttress his contention he referred this Court to annexure HA-5. The counsel claimed that the delay was out of their control since they received the copies late, hence the applicant could not lodge the reference within the statutory time of 21 days after the delivery of the decision.

In his view, he found that the applicant has adduced a good cause for an extension of time. We pray this Court to found that the applicant has adduced good reasons for an extension of time and grant the same. Mr. Rajabu stated that another factor worth for consideration by this Court is the degree of diligence of the applicants as evidenced by the joint affidavit and application and its annexure. He stressed that the applicants have been diligent and prompt in pursuing the reference. He stated that after being supplied with the copies, the electronic admission process was completed. Hence, they lodged the instant application on 29th September, 2022.

Regarding the ground of illegalities, the applicants' counsel contended that the Taxing Master taxed in the Bill of costs contained in Land Application No. 77 of 2018 and Land Application No. 412 of 2018 while there was no any order of costs. He added that the Chairman entertained

the Bill of Costs which was filed out of time and the instruction fee of Tshs. 7,500,000/= was excessive. To bolster his submission he cited the case **Principal Secretary Ministry of Defence and National Service V. Dervam Valmbia** [1992] TLR 185.

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

In reply, Mr. Francis' confutation was strenuous. The learned counsel for the respondent came out forcefully and contended that the applicant has failed to advance the good cause to move this Court to exercise its power to grant an extension of time. Mr. Francis urged this Court to adopt her counter affidavit to form part of his submission. The learned counsel for the respondent argued that the applicants have failed to account for each day of delay. He submitted that the impugned decision was delivered on 11th August, 2022 and the applicant requested copies on 17th August, 2022, however, there is no explanation for the delay of 6 days and the applicants did not take any action.

The learned counsel for the respondent went on to submit that the decision was collected on 20th September, 2022 and he filed the present application on 29th September, 2022, a lapse of 9 days, however, there was no any explanation from the applicant for the lapse of 9 days without

stating any reason. See paragraph 10 of the applicant's affidavit. In the case of **Lyamuya Construction Camp Ltd v the Body of Registered Trustees of Young Women**, Civil Application No.2 of 2010. He contended failure to account for the 15 days of delay is unjustified and that the applicant took reasonable action to prosecute his case.

He insisted that there is no explanation for a delay of 11 days from the date of obtaining the copies to the date when the applicant files the instant application. In his reckoning makes a total of 25 accounted days. He stressed that the applicants' negligence is unexplainable. He invited this Court to hold that the applicant has not accounted for the days of delay. To support his contention he cited the case of **TCC Investment Company Ltd v Dr. Gideon H. Kaunda**, Civil Application No. 310 of 2019 He stressed that this Court should not entertain negligence and sloppiness of the applicant.

He added that the applicant purported to have requested to be supplied with copies on 17th August, 2022 (HA 4 – HA 5), however, the said request was made by Kazi Attorney, and the information contained in paragraphs 5 and 6 were not accompanied by affidavit by Kazi Attorneys who requested the copies. Consequently, in his view he found that the litigant was relying on information availed by another person, thus, he urged this Court not to rely on that information. Regarding the issue of diligence, Mr.

Francis argued that the applicants have not acted diligently. On the issues of illegalities; Mr. Francis argued that the applicant has pointed out the illegalities are untrue because in the attached decision, the tribunal clearly stated that costs to follow the event. He added that the Bill of Costs was not filed out of time. He added that the applicant acknowledges the award of costs to the respondent and the costs were not excessive as the same was taxed based on the scale of the remuneration order.

The learned counsel for the respondent forcefully argued that the points of illegalities are not satisfactory and the same does not exist because the applicant is required to establish its reality. Mr. Francis fortified his submission by citing the case of **Jubilee Insurance Company v Mohamed Sameer Khan**, Civil Application No. 439/11 of 2022 CAT. The illegalities pointed out by the applicant do not exist in the reading of Taxation. He added that the Court needs to ascertain the points of illegality to put the records clear. To cement his position he cited the case of **Ibrahim Swahil Kasundwa and Another v Empimaki Makoi**, Civil Application No. 437/17 of 2022, the Court of Appeal of Tanzania quoted with approval the case of **Principal Secretary** (supra).

On the strength of the above submission, the learned counsel urged this Court to dismiss the application in its entirety with costs.

In his rejoinder, the applicants' counsel reiterated his submission in chief. Insisted that the applicants have accounted for the days of delay. He added that the Chairman taxed in the costs of two Applications.

Having gone through the submission from both sides, it appears that the issue for determination is *whether the applicant has advanced sufficient good cause to be granted the application to appeal out of time.*

It is the legal position that extension of time, being an equitable discretion, its exercise must be judicious. As stated in numerous decisions, such discretion is done upon satisfaction by the applicant through a presentation of a credible case upon which such discretion may be exercised. This position was enunciated by the **East African Court of Appeal in Mbogo v Shah** [1968] EA 93, it was held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal, and the degree of prejudice to the defendant if time is extended."

It is settled law that applications of this nature will only succeed upon the applicant showing good cause for the delay. The model of computing the days delayed is provided under Section 19 (2) of the Law of Limitation Act, Cap 89 [R.E. 2019] which provides: -

*“(2) **In computing** the period of limitation prescribed for an **appeal**, an application for leave to appeal, or an application for review of the judgment, the day on which the judgment complained of was delivered, and **the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.**” [Emphasis added].*

Applying the above provision of law in the instant application means that the time for the applicant to lodge an appeal to this court has to be computed from 20th September, 2022, the day when the applicant obtained a copy of the Judgment to 29th September, 2022 when the applicant lodged the application before this court, whereas the application was lodged 9 days after obtaining the copy of impugned ruling.

The applicant's counsel's reason for the delay is that the supply of a copy of the judgment was done belatedly. In the case of **Lazaro Mpigachai v R**, Criminal Appeal No. 75 of 2018, the Court of Appeal among other things ruled out that failure to obtain copies of the Judgment within time is sufficient good cause to be extended. In the case of **Lazaro Mpigachai** (supra), the application that was lodged 20 days after obtaining copies of the Judgment was declared to be within time. The statutory period of 45 days started to run from the date when the applicant obtained copies of the Judgment and excludes all the periods requisite for obtaining a copy

of the decree or order appealed from or sought to be reviewed. The Court of Appeal of Tanzania in the case of **Lazaro Mpigachai** (supra) on page 9 held that:-

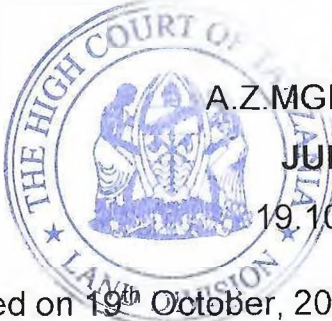
"The petition of appeal was filed 20 days later, that is, on 7/2/2017, thus, this was also filed on time. In the circumstances, certainly, the Appeal was within time"

Applying the above authority in the application at hand, it is clear that the application was within time contrary to the submission made by the counsel for the respondent. Thus, the applicant has advanced sufficient cause for his delay to file an appeal before this Court.

In the upshot, the instant application is granted and the applicant is allowed to file an appeal within twenty-one days after obtaining the copies of this ruling today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 19th October, 2022.

A.Z.MGEYEKWA
JUDGE
19.10.2022

Ruling delivered on 19th October, 2022 via audio teleconference whereas, both learned counsels were remotely present.




A.Z. MGEYEKWA

JUDGE

19.10.2022