

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 322 OF 2021

THE REGISTERED TRUSTEES OF THE
EVANGELISTIC ASSEMBLIES OF GOD
TANZANIA (EAGT).....APPLICANT

VERSUS

FARIDA MFUKO (*As Administratrix of
the late John Felix Mfuko*).....RESPONDENT

RULING

03/03/2022 & 18/05/2022

Masoud, J.

The application before me is asking the court to extend time within which the applicant herein can file her reference against the decision of the taxing master, one, P.I. Chinyele in Bill of Cost No. 571 of 2020. It is made under order 8(1) and (2) of the Advocates Remuneration Order, GN No. 264 of 2015 and section 95 of the Civil Procedure Code, cap. 33 R.E 2019.

In her affidavit supporting the application, the applicant described the history behind the present application. The history is mainly

characterized by Application No. 327 of 2019, which she withdrew before it was heard on its merits and as a result the respondent was awarded costs.

Consequent to the withdrawal and making of the order as to costs, the respondent filed her Bill of Costs No. 571 of 2020 in the District Land and Housing Tribunal for Temeke at Temeke. Pursuant to the ruling of the Taxing master of 10/05/2022, she was awarded costs to the tune of Tshs 4,511,000/-.

In support of the present application, the applicant contended in her affidavit that there was an illegality involving a receipt for instruction fee paid which was used by the court for bill of costs purpose. The same was issued to the respondent on 17/12/2019 for Application No. 327 of 2019 before the respondent was served with a summons on 07/01/2020 for the said case in respect of which the instruction was taken. Thus, the instruction was seemingly taken, and the purported receipt issued, before the respondent's advocate became aware of the case.

The other aspect of the alleged illegality by the applicant was in relation to the fee which was charged by the respondent's Advocate. The fee was

of a case which was fully heard and determined on its merit and not for a withdrawn matter as was the Application No. 327 of 2019) which was not heard on its merits but withdrawn. Hence, there is, according to the applicant, an issue as to the genuineness of the receipt issued and dated 17/12/2019 which is an issue of illegality that missed the eyes of the taxing master and which needs to be investigated upon.

The respondent opposed the application by filing a counter affidavit. She disputed the granting of extension among other things denying that there was illegality committed by the taxing master in relation to the taking of instruction taken before service was effected and that the receipt was thus not genuinely issued in respect of the case that relate to the bill of costs.

The particulars used in denying the above aspect of illegality had it that the case was filed before the district tribunal on 17/12/2019. A notification of the existence of the matter given to the respondent on the same day and on very same day the respondent's counsel received instruction from the respondent. Thus instruction fee was charged by the applicant's advocate immediately after receiving the instruction as there

is no law requiring charging of instruction fee to be preceded by service of summons.

The application was heard by way of filing written submissions. They are on the record as both parties through their learned counsel complied with the filing schedule. By and large, the rival arguments that ensued were within the boundaries of the dispositions of the parties in the affidavit and counter affidavit. I need not reproduce the argument in any details here.

In respect of the allegation as to existence of illegality, there is no dispute that it is now settled law that a claim of illegality, which is apparent on the face of the record and is of vital importance, is in itself a good cause for granting of extension whether or not reasonable explanation has been given by the applicant to account for the delay..

See **Andrew Athuman Mtandu and Another vs Dustan Peter Rima**, Civil Application No. 551/01 of 2001.

It is again not disputed that the receipt which was considered in the bill of costs was issued to the respondent on 17/12/2019 in respect of Application No. 327 of 2019 which was filed on 17/12/2019. The

applicant's contention that the receipt was issued before the respondent's advocate became aware of the matter is supported by annexure EAG6 to the applicant's affidavit. The annexure is the summons issued on 17/12/2019 which was stamped as received by the respondent's counsel on 07/01/2020 and not on 17/12/2019 when the respondent's counsel received instruction.

On the other hand, the allegation by the respondent's counsel that the respondent was notified on 17/12/2019 of the existence of the matter is not supported by anything other than mere assertion of the respondent's counsel. And a further argument that there is no law requiring instruction to be taken after service of summons.

In my consideration, the rival arguments on the alleged illegality and what emerges therefrom, underline the existence of a serious allegation of illegality in the impugned decision of the taxing master. The same needs to be investigated by this court as is intended by the applicant. With this finding which suffices to exercise my discretion in favour of the extension, I need not labour on the other reasons advanced in support of the application.

In conclusion, the extension of time is hereby granted as prayed in the chamber summons. The applicant is to file her application within the time frame provided by the law as from the date of the ruling. The applicant is awarded costs. It is so ordered.

Dated at Dar es salaam this 18th May 2022.



B. S. Masoud
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B. S. Masoud
Judge