

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 73 OF 2023

*(Originating from the Bill of Costs No. 18 of 2020 which was decided on  
14<sup>th</sup> December 2022 by Hon. Chugulu, DR.)*

EDITH LAURENT SHIRIMA (Under Special Power of

Attorney of ROSELINE LEONARD SHIRIMA) ..... APPLICANT

VERSUS

MWAJABU SAID ..... RESPONDENT

RULING

*Date of the last Order 24.03.2023*

*Date of Ruling: 24.03.2023*

A.Z.MGEYEKWA, J

This is an Application for an extension of time to file a Reference on Bill of Costs No. 18 of 2022 which was decided on 14<sup>th</sup> December 2022. The Application is brought under Rule 8 (1) and (2) of Advocates Remuneration Order, 2005 as amended. The application is accompanied

by the Chamber Summons supported by the affidavit of Edith Laurent Shirima, the applicant. The respondent has demonstrated his resistance by filing a counter affidavit deponed by Mwajabu Said, the respondent.

When the matter was called for hearing on 24<sup>th</sup> March, 2023, the applicant had the legal service of Mr. Richard Kimaro holding brief for Mr. Saiwelo, learned counsels and the respondent appeared in person, unrepresented.

In his oral submission, Mr. Kimaro urged this Court to adopt the applicant's affidavit to form part of his submission. Mr. Kimaro submitted that this is an application for extension of time against the Bill of Costs No.18 of 2022 originating form Revision No. 66 of 2020. He claimed that the parties have never had Revision No. 66 of 2020, but the parties had a case at District Land Housing Tribunal in Land Application No. 66 of 2020 then they filed Revision No. 14 of 2021 before Hon. Masoud, J, whereas the applicant lost the case and the respondent was awarded costs. The learned counsel for the applicant went on to state that in application for extension of time once an illegality is raised the same is a good ground for extension of time. Fortifying his submission, he referred this Court to the cases of **Principle Secretary Ministry of Defence v Devram Valambhia** (1992) TLR 85 and **VIP Engineering Ltd & 3 others v Citibank Tanzania Ltd**, Consolidated Civil Reference No. 6,7 and 8 of 2016.

In conclusion, Mr. Kimaro beckoned upon this Court to grant the applicant's application basing on the ground of illegality.

In reply, the respondent was very brief, she forcefully argued that there was no any mixed up of number of case number, and the numbers are the same. The respondent valiantly claimed that she won the in all courts of law but the applicant is employing delaying tactics. Ending, the respondent urged this Court to dismiss the applicant's application with costs.

In his rejoinder Mr. Kimaro reiterated his submission in chief and insisted that the Bill of Costs is tainted with illegalities.

I have keenly followed the submission of the applicant's counsel and the respondent as well as grounds contained in the applicants' affidavit and the respondent's counter-affidavit with relevant authorities. The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

The applicant reasons for his delay is based on the ground of illegality, the position in our jurisprudence is settled on the matter. It is to the effect that, in determining whether the application has met the required conditions for its grant, a conclusion is drawn from the affidavit that

supports the application. The rationale for this is not hard to find. It stems from the fact that an affidavit is a piece of evidence, unlike submissions which are generally meant to reflect the general features of a party's case and are elaborations or explanations on evidence already tendered. This was observed by the Court of Appeal of Tanzania in the case of **The Registered Trustees of Archdiocese of Dar es Salaam v Chairman Bunju Village Government and Others**, Civil Application No. 147 of 2006 (unreported). The applicant under paragraph 4 of the applicant's affidavit pleaded that the Bill of Costs No. 18 of 2022 is tainted with illegalities because the applicant in his application in Bill of Cost No. 18 of 2022 referred a non-existence Application. I have perused the records, and noted that the question of illegality does not arise. The applicant Amended Bill of Costs No. 18 of 2022 referred to the Land Revision No. 66 of 2020 delivered by Hon. Masoud, J and the Taxing Master ins her Ruling referred to the same application, Land Revision No. 66 of 2020. Therefore the raised illegality cannot be termed as illegality and thus cannot be a ground for applying for an extension of time.

Based on the above findings of it is clear that there is no any illegality.

In the event, I find no merit in the application and I hereby dismiss it with wicosts.

It is so ordered.

Dated at Dar es Salaam this date 24<sup>th</sup> March 2023.

  


A.Z.MGEYEKWA  
JUDGE  
24.03.2023

Ruling delivered on 24<sup>th</sup> March 2023 in the presence of both parties.

  


A.Z.MGEYEKWA  
JUDGE  
24.03.2023