

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 810 OF 2022
{Arising from Bill of Costs No.217 of 2022, by C.M Kisongo}

**GLADNES HASHIM RAJAB (Suing as Gardian of Nasra Hashim
Rajabu and Halima Hashimu Rajabu).....APPLICANT**

VERSUS

BILLIONAIRE JOHN MKEU.....RESPONDENT

EX-PARTE RULING

Date of Last Order: 07.03.2023

Date of Ruling: 30.03.2023

T. N. MWENEGOHA, J

The applicant herein sought for an order of extension of time so that she can lodge an Application for Reference out of time, against the decision of this Court [Hon. C. M. Kisongo-DR], vide Misc. Application No.217 of 2021, delivered on 8th day of November, 2022.

The present Application is preferred under **Order (1) and (2) of the Advocates Remuneration Order, G.N No. 263 of 2015**, and supported by the affidavit of Haji Mlosi, the applicant's Advocate. The same was heard by way of written submissions and *Ex parte* against the respondent.

In supporting his submissions, Mr. Mlosi insisted that, there is an error apparently on the face of record. That, the dismissal order of Hon. C.M. Kisongo - DR is illegal. That, this Court had no power to dismiss an Application for Bill of Costs, hence the Taxing Master acted out of her jurisdiction, thus *ultra vires*. That, according to **Order 68 of the Advocates Remuneration Order, G.N No. 263 of 2015**, the taxing master has no power to dismiss the application for Taxation Cause, rather to proceed *ex parte* in default of appearance of both or either of the parties or to adjourn the case. To fortify on his emphasis, he cited the case of **James Anthony Ifada versus Hamis Alawi, Civil Application No. 482/14/2019, Court of Appeal of Tanzania at Shinyanga(unreported)**. That marked the end of his submission and he prayed for this Court to grant the Application.

Having gone thoroughly on the arguments of the counsel for applicant in line with the Affidavit in support of the Application, the issue for determination is whether the Application has merits or not.

In the instant Application, it was contended that, the reason for the applicant to obtain an enlargement of time is the existence of an illegality apparently on the face of the dismissal order by the taxing master, Hon. C.M. Kisongo - DR. The said illegality was based on **Order 68 of the Advocates Remuneration Order, G.N No. 263 of 2015**. That, she was not allowed to do so, instead she was supposed to hear and determine the matter *ex parte* in case of non-appearance of both or one of the parties, or to adjourn the matter to another date.

Primarily, I concur with Mr. Mlosi that, the law is well settled that the existence of an illegality apparently on the face of an impugned decision is tantamount to a sufficient cause capable of extending the time as it was stated in the case of **James Anthony Ifada versus Hamis Alawi, (supra)** to that effect.

Notwithstanding the aforesaid, I do not see if the intended action by the applicant is a proper remedy. My reason being, the Court's record is clear that the Application for Taxation Cause was dismissed for want of prosecution upon the observation and scrutinization of the taxing master; that the applicant's counsel has lost interest in pursuing his Application. That is to say the bill of costs which is subject of this Application was not heard at all. Thus, filing the current Application in the premise is unimaginable and hence, misconceived.

So, even if I proceed to allow this Application, my orders will not be tenable owing to the reasons I have endeavored herein above. If the counsel for the applicant is so interested in his course, he should seek for an extension of time to go after the proper remedies available to him but not on this path that he has chosen to follow.

Consequently, I find the application to be wanting in merits and eventually it is dismissed without costs. It is so ordered.




T. N. MWENEGOHA

JUDGE

30/03/2023