

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

**MISC. LAND APPLICATION NO. 203 OF 2023**

*(Originating from Misc. Land Application No. 404 of 2022 District Land and Housing Tribunal For Kinondoni at (Mwananyamala), Bill of cost no. 572 of 2022 before Hon. Rugarabamu – Taxing Master)*

**THE BOARD OF TRUSTEE OF PENTECOSTAL**

**HOLINESS MISSION.....APPLICANT**

**VERSUS**

**REJOICE NDALIMA.....RESPONDENT**

**RULING**

*12<sup>th</sup> June, 2023 & 11<sup>th</sup> July, 2023*

**L. HEMED, J.**

At the District Land and Housing Tribunal for Kinondoni at Mwananyamala (DLHT), the applicants herein, the **BOARD OF TRUSTEES OF PENTECOSTAL HOLINESS MISSION** had lodged the Bill of Costs, registered as “*MAOMBI MADOGO NAMBA 572 YA MWAKA 2022*” against the present Respondent, one **REJOICE NDALIMA**. The trial Tribunal directed hearing of it by way of written submissions. However, on 1<sup>st</sup> day of February, 2023 the DLHT discovered that the applicant did not serve the respondent with the submissions in chief and eventually dismissed the entire Bill of Costs. The applicant was aggrieved by the dismissal order but

could not challenge it in time, hence the instantaneous application for the following orders: -

*"a) This Honourable Court be pleased to grant for extension of time within which to file an application for Reference to single Judge against the Order made by Hon. L.R. Rugarabamu – Taxing Master on 1<sup>st</sup> day of February, 2023 out of time.*

*a) That, this Honourable Court it be pleased to make any other orders as it may deem just as it may deem just and equitable to grant.*

*b) Costs of this Application be provided for."*

The Application was supported by the affidavit of one **JONATHAN KAINI MWAKAJILEKE**, the Principal officer of the applicants. The respondent challenged the application *vide* the counter affidavit deposed by one **JEREMIA MTOBESYA**, the learned advocate who represented the respondent in Misc. Land Application No. 404 of 2022 and Bill of Costs No. 572 of 2022, at the DLHT – Kinondoni.

The application was heard by way of written submissions. In arguing for and or against the application, the applicants were represented by **Mr.**

**Robert Charles Oteyo**, learned advocate, while the respondent enjoyed the service of **Mr. Jeremiah Mtobesya**, learned counsel.

In the application for extension of time like the one at hand, the applicant is bound to demonstrate good cause. In the affidavit and the submissions in support of the application, two grounds have been asserted for the court to exercise its discretion power. The 1<sup>st</sup> ground is the delay in obtaining the impugned ruling. According to the learned counsel for the applicant, on 2<sup>nd</sup> day of February 2023, the Applicant submitted a letter seeking for the ruling and drawn order after the Taxing Officer had dismissed the Bill of Costs on 1<sup>st</sup> day of February, 2023, but the same was obtained after 47 days, that is on 20<sup>th</sup> day of March, 2023.

The learned counsel also raised the point of illegality by referring to paragraph 9 of the affidavit supporting the application that, the said Bill of costs No.572 of 2022 dismissed by the Tribunal offended the guiding laws. He asserted that the illegality stated by the applicant in the affidavit is the main reason to warrant this Court extend time. In cementing his arguments, he cited the decision of the Court of Appeal in **Principal Secretary Ministry of Defence and National Service vs Devran**

**Valambia** [1992] TLR .185. The learned counsel for the applicant was of the view that, the illegality complained in paragraph 9 of the Affidavit in support of the Application goes to the jurisdiction of the DLHT whereby the Taxing Master refused to exercise jurisdiction vested on him by Order 68 of the Advocates Remuneration Order, 2015.

In reply thereof, the counsel for the respondent submitted that the impugned ruling was ready by 20<sup>th</sup> February 2023. He stated that, the applicants have not proved why the same was supplied to them on 20<sup>th</sup> March 2023.

He argued further that even on assumption that the applicants collected the impugned ruling on 20<sup>th</sup> March, 2013, they have not accounted for the days up to 6<sup>th</sup> April 2023 when the instant application was filed. To cement his argument he cited the decision of the Court of Appeal in **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No.03 of 2007 on the requirement to account for each day of delay.

On the ground of illegality he contended that, illegality is considered as sufficient cause for extension of time if is on the face of records. He cited the decision of the Court of Appeal in **Ngao Godwin Losero vs**

**Julius Mwarabu**, Civil Application No.10 of 2015. He finally prayed for dismissal of the application.

In his short rejoinder submission, the learned counsel for the applicant reiterated his submissions in chief.

Having gone through the rival submissions made by the parties, my duty is to determine whether the application has merits. It should be noted that, the instantaneous application has been brought under Order 8(1) of the Advocates Remuneration Order, 2015 which provides thus:-

*"The High Court may, subject to order 7 extend the time of filing a reference upon sufficient cause"*

The above cited provision requires the court to exercise its discretion powers in application for extension of time upon sufficient cause been demonstrated. I revisited the definition Order to find out if the word sufficient cause has been defined but I could find none. Therefore, what amounts to "sufficient cause" is not defined. It is based on the discretion of the court which in most cases depends on the circumstances of the

case which are to be determined judiciously. Again, in **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 the Court of Appeal had this to say:-

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."*

In the instant case, counsel for the applicant has stated that the Bill of Costs No.572 of 2022 was dismissed on 1<sup>st</sup> day of February 2023 and on the 2<sup>nd</sup> February 2023 he submitted a letter seeking for the ruling and drawn order. However, he was supplied with the same on 20<sup>th</sup> day of March 2023. On 6<sup>th</sup> April 2023, he lodged the instant application. According to Order 7(2) of the Advocates Remuneration Order, (supra) reference has to be instituted within 21 days of from the date of the decision. The dismissal order of the Taxing Officer was issued on 1<sup>st</sup> February 2023, thus, the 21 days for presenting reference lapsed on 22<sup>nd</sup> February, 2023.

According to Annexure "PHM-1" to the affidavit, the impugned Order of the trial Tribunal, certification of it was done by the trial Tribunal on the 20<sup>th</sup> February 2023. This means that by 20<sup>th</sup> February 2023, the Ruling and proceedings were ready for collection. In the affidavit deponed to support the application and in the submissions in support thereof, it has been asserted that the applicant was supplied with copies of the order and proceedings on 20<sup>th</sup> March 2023. Despite being aware that the days within which to file Reference were to expire on 22<sup>nd</sup> February, 2023, the applicant seems to have never been following up for collection of copies of the Order and proceedings from the trial Tribunal. In his affidavit and or the submissions to support the application, the applicant has not stated whether he was making follow-ups and/or what prevented the applicants from making follow-ups. There is no evidence on record to prove that the applicant had ever presented to the Tribunal reminder letters. What is on record is that, the applicants, having presented their letter on 2<sup>nd</sup> February 2023, they did nothing subsequent thereto. It appears that they went to 'sleep' until on 20<sup>th</sup> March 2023 when they collected it. From the foregoing, I am of the firm

view that the applicants were negligent and sloppy in following-up their matter. Apart from negligence, the applicants have not accounted for the days of delay from 20<sup>th</sup> February, 2023 when the impugned Order and proceedings were certified to 6<sup>th</sup> April 2023 when this application was being lodged. In **Lyamuya Construction Company Limited v. Board of Registered Trustees of young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal set out the following guiding factors in granting application for extension of time:-

- a) *The applicant must account for all the period for delay*
- b) *The delay should not be inordinate.*
- c) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and*
- d) *If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged.*

In this present case, as aforesaid, the applicant failed to account for each day of the delay. In the matter at hand, from 22<sup>nd</sup> February,



2023, up to 6<sup>th</sup> April 2023 is almost 44 days which were to be accounted for. In the case of **Bushiri Hassan vs Latifa Mashayo**, Civil Application No. 3 of 2007, it was stated that: -

*"Delay even of a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

Failure to account for each day of the delay as in this case, makes impossible for the court to grant the application for extension of time.

The applicants also pleaded illegality of jurisdiction in the impugned order. I am aware that, it is now settled that for extension of time on the ground of illegality, the same must be apparent on the face of the record. This was held in **Reuben Lubanga vs Moza Gilbert Mushi & 2 others**, Civil Application No.533/01 of 2021, where the Court of Appeal of Tanzania stated thus:

*" It is also the law that illegality by itself can, **if it is apparent on the face of the record and sufficient importance**, be a good cause for extension of time."* (Emphasis added).

I have tried to examine the impugned order to find if there is any illegality apparent on the face of it, I could not find any. The applicant purports to have pleaded illegality in paragraph 9 of the affidavit that supports the application. I have opted to reproduce it hereunder verbatim for purposes of ascertaining if it shows any illegality on the face of the Order in question:

*"9. That, the said Bill of costs no.572 of 2022 dismissed by Honourable Tribunal offended the guiding laws."*

The above paragraph has the meaning that the Bill of Costs No.572 of 2022 is the one which offended the guiding laws. In other words, the applicants are alerting the Court that his Bill of Costs, which was dismissed by the trial Tribunal, was bad in law for offending the guiding laws. From the affidavit of the applicant, the alleged illegality was/is in the Bill of Cost and not apparent on the face of the impugned Order. In that regard, the ground of illegality is not sufficient in the circumstance to grant extension of time.

From the foregoing, I find no merits in the application, it deserves to

fail. In the upshot, the entire application is dismissed with costs. It is so ordered.

**DATED at DAR ES SALAAM** this 11<sup>th</sup> day of July 2023.



  
**L. HEMED**  
**JUDGE**