

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

REFERENCE NO. 26 OF 2023
(From Bill of Costs No. 123 of 2021)

GIDION FARES OPANDA.....APPLICANT

VERSUS

MOHAMED OMARY MASOUD.....RESPONDENT

RULING

13TH to 17th October, 2023.

E.B. LUVANDA, J

In a notice of preliminary objections filed on 13/09/2023, the Respondent asked this Court to determine the following preliminary objections: One, Civil Reference No. 26/2023 was filed on 28/08/2023 is time barred; Two, Civil Reference No. 26/2023 was filed on 28/08/2023 is incompetent for want of leave for extension of time; Three, the affidavit sworn by the Applicant is defective as it contains matters of law, legal opinion and hearsay; Four the affidavit sworn by the Applicant is unmaintainable for being vexatious and abuse of court process for impeaching the court records and attaching (sic, attacking) the judicial officers like the Honourable Judge who have been condemned and they cannot defend themselves in this application at hand.

Mr. Peter Bana learned Counsel for Respondent combined point number one and two, he submitted that the application for reference is supposed to be filed within twenty one days from the date of decision, citing rule 7(1) and (2) of the Advocates Remuneration Order of 2015. He submitted that leave to refile granted by this Court on 27/06/2022 in Reference No. 11/2023, di not waive time limitation neither extended time to file a fresh reference proceedings, cited Order XXIII rule 2 Civil Procedure Code Cap 33 R.E. 2019; **Vision Control and Superintendence Limited vs. MSK Refeneries Limited**, Commercial Case No. 24/2023. He submitted that even if time limit is taken to have started from when leave to withdrawn was granted on 27/06/2023, still the Applicant filed this reference in August, 2023 after elapse of sixty days.

In reply, Mr. Gideon P. Opanda learned Counsel for Applicant submitted that the preliminary objection is misconceived, argued this reference was originally filed in time as reference No. 11/2023 which was withdrawn with leave to refile, as per this Court order dated 27/06/2023. He submitted that extension of time to file a fresh suit is made by the Minister for the Constitutional and Legal Affairs, citing **Vision Control** (supra). He distinguished **Vision Control**, argued is not a good law, for ground that therein the Judge faulted a position of his fellow Judge contrary to the directive in **Mohamed Enterprises (T) Limited vs. Masoud**

Mohamed Nasser, Civil Application No. 33/2012, CAT. The learned Counsel submitted in the alternative that the application is within time, citing section 19(4) and (5) of the Law of Limitation Act, Cap 89 R.E. 2019 which provides that the period spent waiting for the copy of the order shall be excluded. He submitted that after the correspondence and physical followup of the court order granted leave, immediately on 23/08/2023 obtained copy of the necessary documents to file this application and lodged on 25/08/2023.

This reference in either way is out of time. Rule 7(2) of the Advocates Remuneration Order, G.N. 264/2015, set a limitation period of twenty one days for institution of reference counting from the date of the decision. Herein, the impugned decision of the taxing officer was delivered on 14/04/2023. This reference was filed on 28/08/2023, being after expiry of four months and two weeks. The learned Counsel for Applicant shielded and took cover on the order of this Court dated 27/06/2023 that it granted him leave to refile. Going by that order, it was a mere permission allowing the Applicant to institute a fresh reference on the same subject matter, interms of order XXIII Rule 1 (2) (b) and (3) of the Civil Procedure Code, Cap 33 R.E. 2019.

That order did not have the effect of allowing institution of a fresh reference out of time, nor had the effect of extending time for any period.

No wonder the order was open ended, did not set any specific time for filing or instituting a fresh reference. Had this court meant to extend time for filing a fresh reference could had fixed or prescribed a specific time allowable for presenting a fresh reference. Again, I doubt if leave for withdrawal can be made or granted along permission to institute a fresh reference coupled by an order extending time while there is a specific rule which debar that course. Rule 2 of Order XXIII, Cap 33 (supra), with marginal note, limitation law not affected by fresh suit, provide,

"In any fresh suit institutes on permission granted under rule 1, the Plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

To my respective view, **Vision Control** (supra) is a good law. **Alli Said Sakoro, the Administrator of the Estate of the Late Saidi Alli Sakoro vs. Mnaish Mwamlima & Two Others**, Civil Case No. 102/2019 HC Dar es Salaam, cited by the learned Counsel for Applicant, is distinguishable, in a sense that therein the allowance of leave to file embedded with a grace period of twenty one days for filing a fresh suit free of charge (without payment of court fees) was made on account of court error which disoriented the proceedings by ordering the third party to be impleaded and join as co - defendant.

As much the first and second point suffices to dispose this matter, I will not venture deliberating the rest objections.

The first and second objections are sustained.

The reference is dismissed. No order for costs.



E.B. LUVANDA
JUDGE
17/10/2023

Ruling delivered through virtual court at 12:00 hours, where neither Mr. Gideon P. Opanda learned Counsel for Applicant nor Mr. Peter Bana learned Counsel for Respondent attended.



E.B. LUVANDA
JUDGE
17/10/2023