

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REFERENCE NO. 04 OF 2021**  
(Arising from Bill of Cost No. 148 of 2019)

**CHARLES HANS KIRENGA.....APPLICANT**

**VERSUS**

**PETA MHOMA .....RESPONDENT**  
(Administratrix of the Estate)  
(of Late Jumanne Mhoma )

**RULING**

*08/07/2021 & 28/07/2021*

**Masoud, J.**

The applicant seeks two types of reliefs under section 7(1), (2) and 8(1)(2) of the Advocates Remuneration Order, GN No 263 of 2015. The first is extension of time within which to file a reference against a decision of taxing matter in Bill of Costs No. 148 of 2021, and the second is to reverse, quash, revise or set aside the ruling in the said Bill of Costs No. 148 of 2019.

The application was supported by an affidavit of the applicant and was opposed by counter affidavit of the respondent. Hearing was conducted by filing of written submissions pursuant to the order of the court which was duly complied with. The submissions expounded on matters averred

in the respective affidavit and counter affidavit. The issues which arise from therefrom in relation to the first prayer are: what is the period of delay involved and whether the applicant has accounted for the delay and justified the granting of the extension.

The applicant in his affidavit which was expounded by his submissions stated that as he was not notified the date for the ruling in the Bill of Cost as was ordered by the court, he knew that the ruling had already been delivered on 04/06/2020 when the time frame of 21 days for making reference in this court had already expired as he was served with the execution some time in February 2021. Having so known about the ruling, he could not act immediately as he lost his father on the date which he did not disclose and had to drive to his home town (Ifakara) for the funeral where he stayed upto 02/03/2021. He fell sick after getting back from the funeral and had to stay home between 02/03/2021 and 15/03/2021 receiving herbal treatment. The decision he seeks to challenge once extension is granted was made in ignorance of the fact and the law on engagement of an advocate and without there being any proof of instruction fees paid.

In his focussed submissions, emphasis was made on the alleged failure to notify the applicant of the date for ruling and hence denial of his right

to take action timely; the allegation that the ruling was in violation of the law and in so doing cited the 11th schedule, item (1) of the Advocates Remuneration Order, 2015 which prescribe a a scale of Tshs 1,000,000/- and rule 46 which requires bills of Costs to be taxed on prescribed scales, unless otherwise certified by a judge. By taxing the instruction fees at 12,000,000/-, the taxing officer exercised her powers contrary to the law, which in his view amounted to an illegality warranting granting of the extension. Reliance was made on among others **Principal Secretary of Defence and National Service v Devran P. Valambhia**(1992)TLR387 on the statement of principle on the effect of alleging illegality in an application for extension.

As to the respondent, he disputed the reasons given. She was of the position that the application was not meritorious. The applicant had a duty of following up the matter of which he had personal knowledge of its existence. The application is mere abuse of court processes. In her brief written submissions, the respondent challenged the competence of the application saying it was omnibus as prayers sought were too distinctive to be combined in one application. She relied on the relevant provisions under which the application was brought and **Rutagatina C.L vs The Advocates Committee and Another**, Civil Application No. 98

of 2010, on principles applicable to an omnibus application to cement the argument that the prayers are distinct.

In respect of the extension of time sought, the respondent argued that the delay in filing a reference was not accounted for by the applicant. Firstly, the allegations relied on as reasons for accounting for the period of delay lack proofs. For example, the allegation of ruling by notice was disputed for lack of proof, say an affidavit of a person (not disclosed) who availed the notice. The case of **John Chuwa vs Anthony Ciza** (1952) TLR 233 was cited in support of the argument. The case was re-affirmed in **Tanzania Breweries Ltd vs Herman Blidad Minja**, Civil Application No. 11/18 of 2019 which emphasised on the need of filing an affidavit of a material person in order to explain the delay.

Secondly, although the applicant said that the ruling had already been delivered, he did not disclose when exactly he became aware of the ruling in order to explain the delay correctly. On this requirement the case of **Abdul Rahman Salemeen v Africarriers Ltd** Misc. Comm No. 203 of 2018 HC was cited.

The phrase that he became aware some time in February 2021 translate into a failure to account for any single day of the delay. It was argued that the applicant became aware of the ruling When he was served with

the application for execution No. 76 of 2020 on 11/01/2021 as evidenced by the summons duly served to him personally. Thus, the delay as from 11/01/2021 should have been explained. Reliance was made on **Royal Insurance Tanzania Ltd v Kiwengwa Strand Hotel Ltd**, Civil Application No. 116 of 2008, which had it that the applicant must show the court that he acted very expeditiously when he became aware that he is out of time.

As to the point of illegality it was argued that it was not apparent on the face of the record, and would require in depth long drawn process of scrutiny. The argument was reinforced by reliance on **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, among others.

When the matter came for mention on 08/07/2021, the matter was set for ruling as there was no rejoinder filed by the applicant pursuant to the filing schedule set by the court.

Having scrutinized the application and its supporting affidavit and submission in chief against the backdrop of the counter affidavit and reply submissions, I was struck by the allegation that there was a

illegality in the ruling which warrant this court to extend the time for filing a reference before this court. I saw it fit to start with this point.

In line with the principles governing illegality as referred to me, it was not hard to find that the manner in which the point was alleged in the affidavit and subsequently argued was apparent that the alleged illegality was not apparent on the face of the record. There was reference to the provisions of the Advocates Remuneration Order, 2015 but reading the provisions in the light of the alleged point raises a number of issues which would require an in-depth process of scrutiny of the provision of the said Order and evidence as to whether they are applicable and if so they were complied with. The subject matter giving rise to the Bill of Cost was appeal. The relevant Order has other provisions other than the one relied on by the applicant, which cater for certain appeals. This situation is again in itself a proof of a long drawn process that will entail the court in satisfying itself that the point was indeed a point of illegality. I accordingly resolve against the point.

As to the other reasons advanced in explaining the delay, I note that the affidavit of the applicant as well as his submissions in chief was silent on crucial materials needed in exercising the court discretion in favour of the extension. Firstly, the specific date on which the applicant became

aware of the impugned ruling is missing; secondly, the applicant is silent as to when his father passed away, and when he drove to his home town; thirdly, the applicant is silent on the proof of his alleged "sickness"; the death of his father, and the travel to his home town.

I have had regard to the omission of the exact date the applicant became aware of the ruling despite its importance in calculating the extent of the delay, if I forego the period after the delivery of the ruling and before the applicant became aware of the delivery of the ruling. I was equally mindful that there were no plausible explanations given by the applicant as to why such crucial information was left. I agree with the respondent that the applicant was undoubtedly served with the notice to show cause in Execution No. 76 of 2020 on 11/1/2021 as per the copy of the notice annexed to the respondent's counter affidavit. The said notice was not disputed in any way by the applicant. There is no doubt that the omission was by design.

On the strength of the principles applicable on how the court may exercise its discretion in favour of the extension sought, of which the authorities were ably invoked herein, I would as I hereby do so find against the application for the absence of crucial materials accounting for the delay and justifying the granting of the extension.

In the results, the application is without merit. It is accordingly dismissed with costs.

It is so ordered.

Dated and Delivered in Dar es Salaam this 28<sup>th</sup> day of July 2021.

  
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**B. S. Masoud**  
**Judge**

