

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPLICATION NO. 31 OF 2021

(From the High Court of Tanzania at Mbeya in Bill of Costs No. 13 of 2018
and Land Appeal No. 74 of 2016. Originating from District Land and
Housing Tribunal for Rungwe in Land Application No. 16 of 2014)

PIUS @ EDSON JAMES MWANYINGILI.....APPLICANT

VERSUS

LWESYA BERNARD.....1ST RESPONDENT

ABIA MWANSASU.....2ND RESPONDENT

MAGRETH MWAKYEMBE.....3RD RESPONDENT

RULING

Date of Last Order: 11/08/2021
Date of Ruling : 09/09/2021

MONGELLA, J.

The applicant is seeking for extension of time within which to lodge a reference against a taxation ruling dated 15th February 2021 rendered in Bill of Costs No. 13 of 2018. The application is made under regulation 8 (1) of the Advocates Remuneration Order, G.N. 264 of 2015. It is supported by the affidavit of the applicant's advocate, Mr. Justinian Mushokorwa. It was argued by written submissions.

In his submission, Mr. Mushokorwa while also referring to his affidavit in support of the application, advanced one major reason for the delay, being delay in issuance of copies of the ruling and drawn order. He submitted that the ruling was rendered on 15th February 2021. Thereafter he wrote a letter on behalf of his client requesting for the copies thereof on 17th February 2021. On 26th April 2021 he was only availed a copy of the ruling. Though latter he changed the date to receiving the ruling on 05th May 2021 saying that 26th April 2021 was a typing error as the same was a public holiday.

Referring to the case of **Tanzania Pharmaceutical Industries Ltd. v. Dr. Ephrahim Njau** (Number 1) [1999] TLR 299, he contended that it is the settled practice of this court that applications for any judicial relief must be accompanied by the decision and drawn order forming the basis of the relief sought. He argued that though in this decision the Court of Appeal was dealing with an application for stay of execution under the Court of Appeal Rules, the principle settled can be applied in other cases as well.

He further referred to section 19 (2) of the Law of Limitation Act, Cap 89 R.E. 2019 which directs for exclusion of the time spent in waiting for copies of decision and decree in computation of time. Referring to the case of **Transcontinental Forwarders Ltd. v. Tanganyika Motors Ltd** [1997] TLR 328; and that of **Foreign Mission Board of Southern Baptist Convention v. Alexander Panomaritis** [1984] TLR 146, he argued that once a request letter has been written the registry is obliged to notify the party to collect the copies once they are ready for collection.

In reply, Mr. Ignas Ngumbi, learned counsel for the respondent, opposed the application. He started by challenging Mr. Mushokorwa's contention regarding the date of receiving copies of ruling. He contended that the applicant's affidavit depicts delay of 9 days which remain unaccounted for. He refuted Mr. Mushokorwa's contention that the date, that is, 26th April 2021 was a typing error.

On this point, he argued that if truly it was a typing error, then the applicant ought to have filed a reply to counter affidavit whereby he should have stated so. To buttress his point he referred the court to the case of **Danford Mashauri Amanuel Malleo v. Godwin Amanuel Malleo and Another**, Misc. Civil Application No. 360 of 2019 (CH at DSM, unreported). He further referred to the case of **Mbeya-Rukwa Autoparts and Transportation Ltd. v. Jestina George Mwakyoma** [2003] TLR 251, which held that "*pleadings by affidavits are complete with the applicant's reply, if any, to the respondent's counter affidavit.*" He was of the stance that the contention that the date, that is, 26th April 2021 was an afterthought and the applicant's counsel has not stated which date he exactly obtained the copies of the ruling.

Mr. Ngumbi further argued that the applicant's reason that he was waiting for copies of ruling and drawn order is not sufficient. He argued so on the ground that the copies are not necessary documents in application for reference under the Advocates Remuneration Order, 2015 or any other law. He further argued that if the same was a prerequisite then the applicant's application is incompetent before this court as it has not been accompanied by a copy of the drawn order. In addition, he

challenged the applicant's reason for delay saying that it is not indicated in the ruling the date the same was certified or supplied to the applicant. He was of the view that the lack of such dates renders the entire application wanting in merits. Referring to the case of **Hassan Abdulhamid v. Erasto Eliphase**, Civil Application No. 402 of 2019 (CAT, unreported), he argued that the applicant's unproved allegations calls for dismissal of his application.

Further, referring to section 19 (2) of the Law of Limitation Act and the case of **Valerie McGivern v. Salim Farkrudin Bala**, Civil Application No. 386 of 2019 (CAT, unreported), he argued that the applicant ought to have automatically excluded from computation of time, the time spent in waiting for copies of the ruling and drawn order whether he received the copies on 26th April 2021 or 05th May 2021. Considering this position of the law, he was of the stance that the applicant's application is an abuse of the court process.

Further, counting from 26th April 2021 to 05th May 2021 when this application was filed in this court, Mr. Ngumbi argued that there are 9 clear days that are unaccounted for. Referring to the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT, unreported) he argued that the applicant ought to have accounted for each day of the delay. He distinguished the case of **Tanzania Pharmaceutical Industries** (supra) cited by Mr. Mushokorwa on the ground that the same dealt with an application for stay of execution made under the old Court of Appeal Rules.

He further distinguished the case of **Transcontinental Forwarders** (supra) on the ground that the same dealt with duties of the court in furnishing certified copies which is not the point of contention in the application at hand.

Referring to paragraph 4 of the respondent's counter affidavit, he further argued that the applicant's application was supposedly filed electronically as mandatorily required under the law, that is, Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018. He contended that it is in practice that the application could be filed online without copies of the ruling or order, however upon admission the Hon. Deputy Registrar would direct for the ruling or any other document to be attached, if need be. In support of his application he referred to the case of **Mohamed Hashil v. National Microfinance Bank Ltd (NMB Bank)**, Revision No. 106 of 2020 (HC, unreported).

In rejoinder, Mr. Mushokorwa first addressed Mr. Ngumbi's contention that the applicant never filed a reply to the counter affidavit to explain on the dates purportedly mistakenly typed. While distinguishing the case of **Danford Mashauri** (supra), on the ground that in this case there was an allegation of forgery of a Will, to which the court was of the view that the same was serious necessitating to be rebutted in a reply to counter affidavit, he argued that replying to counter affidavit is not a legal requirement in our jurisdiction.

Explaining further on the issue of date, that is, 26th April 2021, Mr. Mushokorwa contended that he never disputed that the same is a public

holiday. He said that it is a common fact which the court can take judicial notice and thus there was no necessity of making a reply thereof.

Replying on the argument by Mr. Ngumbi that the copies of ruling and drawn order were not necessary, Mr. Mushokorwa insisted that the copies were important in preparing and lodging the reference in this court. He reiterated his position that it is a settled practice that every application must be accompanied by copies of ruling and drawn order. He as well countered the argument that since cases are filed electronically there was no need of waiting for copies of judgment and decree. On this issue, Mr. Mushokorwa argued that the application for reference could not be prepared without having the copies of ruling at hand. He had a stance that one has to read the ruling to extract the points to challenge the same.

Contrary to what he stated in his submission in chief, whereby he said that he received the copies on or about 05th May 2021, Mr. Mushokorwa stated that he received the said copies on 5th May 2021.

I have given the arguments by the parties due consideration. The settled position of the law is that extension of time is granted at the discretion of the court upon sufficient reasons being advanced by the applicant. See: **Barclays Bank Tanzania Limited v. Tanzania Pharmaceutical Industries & 3 Others**. Civil Application No. 62/16 of 2018 (CAT at DSM, unreported); and **Alliance Insurance Corporation Limited v. Arusha Art Limited**, Civil Application No. 33 of 2015 (unreported).



The major reason for the delay advanced by the applicant, as I stated earlier, is that there was delay in obtaining copies of ruling and drawn order by the taxing master. Mr. Ngumbi argued that there is no requirement under the Advocates Remuneration Order, 2015 or any other law to accompany the application for reference with copies of ruling and drawn order. In fact the Advocates Remuneration Order, 2015 under Rule 7 (2) only provides that reference to the High Court shall be made by way of chamber summons supported by affidavit. It follows therefore that the law is silent on the documents to accompany the reference at the time of filing.

However, in my considered opinion, it is important for the copy of reference to accompany the reference so as to enable the registry to ascertain the admissibility of the reference. As argued by Mr. Mushokorwa the copy of ruling is imperative as well for enabling the applicant to extract the points for preparing the reference. In a number of decisions, which I wish to borrow the wisdom of the learned judges, this Court in noting the importance of the ruling in accompanying the reference has considered the delay in issuance of the ruling as a good cause. See: **Stephen Vitus Mapunda v. Yohana Mchalo**, Misc. Land Application No. 729 of 2020 (HC at DSM-Land Div., unreported); and **Joseph Ngereja Mchunga v. Equity for Tanzania Limited**, Civil Reference No. 9 of 2020 (HC at DSM, unreported).

Under section 19 (2) of the Law of Limitation Act, Cap 89 R.E. 2019, the time one spends in waiting for copies of the impugned decision is to be excluded in computation of time. This provision was amplified by the

Court of Appeal in the case of **Alex Senkoro and 3 Others v. Eliambuya Lyimo**, Civil Appeal No. 16 of 2017 (CAT, unreported) by ruling that the time one waits for issuance of the copies of judgment or proceedings has already been excluded under the law.

See also: **The Director of Public Prosecutions v. Mawazo Saliboko @ Shagi & 15 Others**, Criminal Appeal No. 384 of 2017 (CAT at Tabora, unreported) whereby CAT discussed the application of section 379 (1) (b) of the Criminal Procedure Act, which is couched in similar terms as section 19 (2) of the Law of Limitation Act. The position was further cemented in the case of **Samuel Emmanuel Fulgence v. The Republic**, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported), by providing the exact time on which time is to start running. The Court ruled that time shall start to run on the date the copies of judgment and decree were ready for collection, that is, on the date certified by the court/tribunal on the said judgment or decree.

As per the case of **Samuel Emmanuel Fulgence** (supra) the date of reckoning is the date of certification stamped on the copies of the ruling/judgment and not the date the party collected the said copies. In the matter at hand, as evidenced on record, the date of certification is not indicated. It is only the date of pronouncement of the ruling, that is, 15th February 2021 that is indicated. Mr. Mushokorwa argued that the copy was availed to the applicant on 5th May 2021. He was of the view that this was the date the same was ready for collection. Taking into consideration that he wrote a letter requesting for the copies within reasonable time, that is, on 17th February 2021, and that no date of

certification has been indicated, I find that the applicant acted diligently in obtaining the copies of ruling for filing the reference.

Mr. Ngumbi challenged the letter by the appellant's advocate requesting for the said copies on the ground that it was not authentic as it does not indicate that the copies were needed for filing of reference and was never served to the respondents. I find the argument by Mr. Ngumbi baseless. It is nowhere provided that the letter must indicate that the ruling is intended for filing of reference. If the same was also not served to the respondent it is unfortunate, but it does not render the letter unauthentic. The parties are entitled to be availed with the copies of the decisions entered by the court. The respondent was served with the application for reference within 7 days as required under section 7 (3) of the Advocates Remuneration Order, thus not prejudiced by not being served with the letter for request of the ruling.

Mr. Ngumbi only challenged the date of 26th April 2021 as being a public holiday. On this I agree with Mr. Mushokorwa's contention that the said date being a public holiday, the court should take judicial notice that the applicant could not be availed the copies on this date as the court is not on business. Instead, he rectified the error by submitting that he received the copies on 5th May 2021. Since Mr. Ngumbi did not dispute the fact that the copy of the ruling was ready for collection on 5th May 2021 by providing the exact date when the same was ready for collection, it becomes difficult to refute the applicant's claim that the copy was ready for collection on 5th May 2021, the date he also filed this application.



In consideration of the observation I have made above, I find the reason advanced by the applicant for the delay, that is, delay in obtaining copies of ruling of the taxing master, being sufficient. The application for extension of time is thus granted. The applicant is given 21 days from the date of this ruling to file the reference in this court. Each party shall bear his own costs of the suit.

Dated at Mbeya on this 09th day of September 2021.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 09th day of September 2021 in the presence of the respondents and Mr. Justinian Mushokorwa, learned advocate for the applicant.




L. M. MONGELLA
JUDGE