

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CIVIL APPLICATION NO. 12 OF 2023

(C/F Misc. Civil Application No 86/2022, Originating from PC Civil Appeal No 3 of 2012 High Court of Tanzania at Arusha, Civil Appeal No. 47/2011 District Court of Arusha at Arusha, Originating from Probate and Administration Cause No 27/1996, Arusha Urban Primary Court)

SELEMANI ALLY HATIBU APPLICANT

VERSUS

MGENI ALLY 1ST RESPONDENT

YUSUPH MACHA 2ND RESPONDENT

RULING

03rd & 26th May, 2023

TIGANGA, J.

The Applicant herein lodged this application under section 14(1) of the **Law of Limitation Act**, Cap. 89 R.E 2019, seeking for extension of time within which to file an Application for Bill of Costs in respect of the ruling in Misc. Civil Application No. 86/2022 which was delivered by this Court on 28th October, 2022 (Tiganga, J.).

The application is supported by the applicant's sworn affidavit in which he deposed that, the main reason for his delay was due to a late supply of the certified copies of the court's ruling and drawn order. According to his affidavit, after the ruling was delivered on 28th October,

2022, he promptly requested such copies on 6th November, 2022 but he was not availed of the same until the required time limit to file an Application for a Bill of Cost which is 60 days had already lapsed.

The respondents contested the application through the counter affidavit sworn by the 1st respondent, first by raising the point of law in the counter affidavit that the affidavit is defective for lack of a signed jurat and attesting on two different dates before the commissioner for oaths. He also deposed that the alleged letter does not indicate that it was filed and received by the court. Further to that he said, there is no proof to show that the applicant visited the registry to make follow-up of the ruling and there is further no evidence to prove that the document was actually supplied. In his view, the lack of such proof renders the application of this nature un grantable. Lastly, he submitted that the applicant has not accounted for all days of delay. He further urged the court to find that the applicant had a bad motive, as even the order to serve the respondent was effected out of time fixed by the court while there was no reason for such a delay to effect service.

Briefly, the background leading to this application is that the applicant was the respondent in Misc. Civil Application No. 86 of 2022 which was filed before this court. That application was dismissed with cost

in its ruling delivered on 28th October, 2022. Pursuant to the said order, the applicant intends to file a bill of costs but since he delayed filing it therefore he is precluded by a time limit to file the same. Following such a state of affairs, he has preferred this application seeking for enlargement of time.

When the matter was called for hearing which proceeded by way of written submissions, the applicant was represented by Mr. John Mseu while the respondents enjoyed the services of Mr. Michael Lugaiya all learned Advocates.

Submitting in support of the application, Mr. Mseu adopted the contents of the affidavit filed in support of the application to form part of his submission and added that, after the ruling of the trial court was delivered, the applicant immediately filed a letter to the court to be supplied with the copies of same. That, by virtual operation of law the applicant could not make an application for the Bill of Costs without being supplied with the certified copies of the ruling and drawn order from the trial court.

In support of his submission learned counsel cited the case of **Michael Lesani vs John Aliafye** [1997] TLR. Further to that, since the applicant managed to obtain a copy of the ruling from TANZLII, he

however, could not get a copy of the drawn order from the same forum, he prays that the application be granted in the interest of justice.

Opposing the application, Mr. Lugaiya started by pointing out that, the applicant was to file his written submission on or before 12th April 2023 yet, he filed the same on 17th April, 2023 hence, he was out of time. Reverting to the main application, Mr. Lugaiya prayed to adopt the contents of the counter affidavit filed opposing the application and added that, the respondents challenges the authenticity of the letter allegedly filed in court requesting for requisite copies. That, the said letter does not show the stamp of the court registry hence, it is as good as if no letter was lodged.

Further, the requested documents were availed within time but the applicant did not take necessary action to collect the same. In the circumstances, the applicant had no good reasons to account for the delay. As for the case cited by the applicant of **Michael Lesani vs John Eliafye** (supra), the learned counsel argued that, the applicant has not shown any diligence. He referred the court to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Association of Tanzania**, Civil Application No 2 of 2010 CAT (Unreported).

It was Mr. Lugaiya's further submission that, the alleged claims that the applicant obtain the copy of the ruling from TANZLII has only been raised in the submission but, the applicant did not mention the date he obtained the same. He prayed that the application be dismissed with costs.

In his brief rejoinder, the applicant's learned counsel reiterated his submission in chief and added that, it is true that they were ordered to file their submission by 15th April, 2023 but the same was on Saturday thus, and as per the provision of section 60(1) of the Interpretation of Laws Act, weekends are excluded. To support his stance, he cited the case of **Zainab Musa Mbaga vs Said Ibrahim & Another** (PC. Civil Appeal No 17/2020) and prayed that, the application be granted.

I have considered the application, the parties' affidavits, and the submission in support of the application and that opposing the application. I would like to first respond to the issue concerning the time within which the submission in chief was ordered to be filed within this court. As rightly submitted by both parties the submission in chief was to be filed on or before 15th April, 2023 but the exchequer receipt evidences that the same was filed on 17th April, 2023. It is the claim by the applicant that 15th April, 2023 was on Saturday hence the same was filed on 17th April, 2023 on

Monday. In determining this issue I will be guided by the provision of section 19(6) of the **Law of Limitation Act** which provides that:

“(6) Where the period of limitation prescribed for any proceedings expires on a day when the court in which such proceedings is to be instituted is closed, the proceedings may be instituted on the day on which the court reopens.”

Guided by the above provision of law and bearing in mind the circumstance of the present case, since the date of 15th April, 2023 was on Saturday, then it was proper for the applicant to file his submission on 17th April, 2023 to which it was the date that this court resumed after the weekend. As for the claim by the Respondent that the applicant's affidavit is defective, I find the claim wanting merit as the same is properly filed before the court.

Regarding the merit of the application. The main issue calling for the determination by this court is whether the applicant has demonstrated sufficient reasons for the delay. It is a trite law that, the grant of extension of time is a matter of discretion of the court, the discretion which, however, must be exercised judiciously. The reasons for the delay have been stated by the Applicant under paragraphs 3 and 4 of his affidavit to be the delay in obtaining certified copies of the ruling and drawn order for the bill of costs.

The applicant contends that, he wrote a letter to the Deputy Registrar of this court requesting to be availed with the certified copies of the ruling and drawn order but the same was not availed to him and thus the time to file the bill of costs ran against him. This court is faced with a similar situation in Civil Reference No. 9 of 2020 arising from the Ruling of the Taxation Officer in Taxation Civil Case No. 76 of 2019, **Joseph Ngereja Mchungu vs. Equity for Tanzania Limited**, Kakolaki J, held that;

" The law under section 19(2) and (3) of Act, [Cap. 89 R.E 2019] (LLA) provides automatic exclusion of the time spent for obtaining a copy of judgment/ruling or decree or order sought to be impugned. "

This was also the position of the Court of Appeal in **Alex Senkoro and 3 others vs. Eliambuya Lyimo (As Administrator of the Estate of Fredrick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 CAT (unreported) where it was held:

"We entertain no doubt that the above sub-sections expressly allow the automatic exclusion of the period requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time."

Based on the above argument and the holdings of the Court of Appeal the time requisite needed in obtaining the certified copies of the

judgment and decree is to be excluded from the computation of time. Moreover, the counsel for the respondent contends that the applicant can not benefit from that provision because the letter allegedly filed in court requesting requisite copies is not authentic for the said letter does not show the stamp of the court registry hence, it is as good as if no letter was lodged.

Further, the requested documents were availed within time but the applicant did not take necessary action to collect the same. In the circumstances, the applicant had no good reasons to account for the delay as the applicant has not shown any diligence. He referred the court to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Association of Tanzania**, (supra) which insists on the diligence of the applicant in prosecuting the action he intends to take.

The other reason advanced by Mr. Lugaiya is that the alleged claims that the applicant obtained the copy of the ruling from TANZLII have only been raised in the submission but, the applicant did not mention the date he obtained the same. He prayed that the application be dismissed with costs.

First and foremost, the application of Rule 19(6) of the Law of Limitation Act, is material where the application requires the attachment of the said decision which was not supplied on time. It also becomes material where the applicant states when did he obtain the said decision to allow the court to compute the days delayed. In this case, although the applicant has advanced the sole ground that he was awaiting the copy of the ruling, he did not state in his affidavit when did he receive the ruling, and worse enough he did not attach the said ruling with the application at hand. The law in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Association of Tanzania**, (supra) requires everyday delay to be accounted for, and the applicant to show diligence in prosecuting the intention he wants to take. The material upon which the court should base must be made clear in the affidavit seeking to extend time.

In this case, neither in the affidavit nor the submissions the applicant has given the supportive material to assist the court to determine the criteria for extension of time. That said, the application is therefore refused and dismissed for want of merits. No order for costs is made.

It is so ordered.

DATED and delivered at **ARUSHA** this 26th day of May, 2023.




J.C. TIGANGA

26/05/2023