

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA SUB – REGISTRY

AT SONGEA

(LAND DIVISION)

MISC. LAND CASE APPEAL NO. 10 OF 2023

(Originating from the decision of this Court in Land Case No. 06 of 2017)

STEPHEN NGALAMBE APPLICANT

VERSUS

ONESMO EZEKIA CHAULA RESPONDENT

SONGEA MUNICIPAL COUNCIL RESPONDENT

EX-PARTE RULING

Date of last Order: 31/08/2023

Date of Ruling: 11/09/2023

U.E. Madeha, J.

It is worth considering the fact that, the above-named Applicant has moved this Court by way of chamber summons made under section 52 (2) of the *Land Disputes Court Act* (Cap. 216, R. E. 2019) and section 14 (1) of the *Law of Limitation Act* (Cap. 89, R. E. 2019), seeking for extension of time within which he may file an application for bill of costs in Land Case No. 06 of 2017 out of time. The application has been taken out on the

grounds and reasons set forth in the affidavit sworn by Respicious R. Sylvester Mukandala, the Applicant's learned advocate.

According to the affidavit sworn in support of this application, there are two major reasons for the delay in filing the bill of costs. **One**, that the copy of an order of the Court was supplied late. **Two**, the Court failed to admit on time the online application for bill of costs which was filed on time.

The first Respondent filed his counter affidavit resisting the allegations and asserted that there was no need to have a copy of an order in order to file the bill of costs. Also, he added that there is no proof either by an affidavit sworn by the Court Officer or any genuine document, to prove that there was failure in admitting the online-filed application.

In fact, this application was disposed of by way of written submission. The Applicant was represented by Mr. Respicious Mkandala, while the first Respondent was represented by Mr. Vicent Kassale. The second Respondent neither filed the counter affidavit nor the written submission in this application despite the fact that summons was properly served to both Respondents. For that reason, the application proceeded *ex- parte* against the second Respondent.

In his submission in support of the application, Mr. Respicious Mkandala argued that the delay in filing the application for a bill of costs was attributed by the Court's delay in issuing the Court order. He stated that a copy of Court order was a vital document in filing the bill of costs in order to assist the Court and the opposite party in knowing that the Applicant was granted costs. He added that the allegations made by the first Respondent that a copy of an order was not important are not right. To buttress his stance, he cited the case of **Regional Manager TTCL v. Othman Mbarouk & 21 Others**, Civil Application No. 04 of 2010, in which the Court of Appeal of Tanzania dismissed the application for restoration of the application for not attaching a copy of ruling, and the Court held that a copy of the ruling was a vital document to be attached to help the Court and the adverse party know that the application was dismissed.

Mr. Respicious Mkandala argued further that the delay in filing the bill of costs was also due to the late admission of the online application. He averred that immediately after being supplied with a copy of an order, made an online application on the 19th day of May, 2023 and it was admitted by the Court on 23rd May, 2023 and it was found to be out of time

since the time limitation for filing the application for a bill of costs was on 22nd May, 2023. He stated that the late admission was caused by the Court and the Applicant cannot be punished for the mistake made by the Court. To expound his argument, he made reference by citing the case of **Tanzania Revenue Authority v. Tango Transport Company Ltd.**, Civil Application No. 5 of 2006, in which the Court of Appeal of Tanzania stated that it was wrong for the parties to be punished for the mistake done by the Court.

He further submitted that the first Respondent in his counter affidavit has asserted that the attached copy of annexure, which is the online admission document is not genuine is not correct since it is a judicial document and the Court has to take judicial notice of it under the provision of section 58 of the *Evidence Act* (Cap. 6, R. E. 2019) and he prayed for this application to be allowed.

On the other hand, Mr. Vicent Kassale, arguing for the first Respondent resisted the application. He stated that the law governing the bill of costs is the *Advocate Remuneration Order, 2015 (G. N. No. 264 of 2015)*, and it doesn't prescribe the requirement of attaching a copy of an

order in application for bill of costs. He added that since the law is silent on that, there is a need to attach it.

He submitted further that there is no proof that there was failure to admit the online application. Instead, he argued that the attached computer printout is electronic evidence, and under the *Electronic Transaction Act* (Cap. 442, R. E. 2019), the Applicant is bound to prove its authenticity. He made reference in the case of **Musa Zambezi v. Erick Mingo**, Civil Appeal No. 13 of 2019, in which the Court stated that it is the duty of the Applicant to prove the authenticity of the document. Consequently, he added that the authenticity of the attached document was to be proved by an affidavit sworn by the Court officer and failure of which makes the document to have no evidential value.

In his rejoinder submission, the Applicant's advocate stated that; though the *Advocate Remuneration Order* (supra) does not prescribe the requirement of attaching a copy of an order in application for bill of costs, practice demands that it must be attached. To cement it, he cited the case of **Regional Manager TTCL v. Othman Mbarouk & 21 Others** (supra) and **Yusuph Manji v. Edward Masanja & Another**, Civil Appeal No. 78 of 2002.

On the issue of the online filed application, he submitted that the Court is to take judicial notice of the attached document since it is from the Court records.

As far as I am concerned and having gone through the affidavit, the counter affidavit and the submissions made by the learned advocates from both parties in this application, I find the main issue that needs to be determined by this Court is whether the Applicant has advanced good and genuine cause to convince this Court to extend time within which he can lodge an application for bill of costs.

Certainly, it is a settled legal principle that a party who seeks for an order for extension of time must advance good cause to enable the Court to exercise its discretionary power in extending time or otherwise. In the case of **Republic v. Yona Kakonda & 9 Others** (1985) T. L. R. 84, it was held that:

"In deciding whether or not to allow an application to appeal out of time, the Court has to consider whether there are sufficient reasons not only for the delay but also sufficient reasons for the extending time during which to entertained the appeal."

The factors to be taken into account in granting an order for extension of time were concisely stated by the Court of Appeal of Tanzania in 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 (unreported). Among the factors is for the Applicant to account for all period of delay.

It is important to note that, the first reason advanced by the Applicant in this application is the delay in obtaining a copy of an order that granted costs. Having gone through the Court order dated 24th March, 2023, I have noticed that the copy was supplied to the Applicant on 31st May, 2023. This application was filed on 7th June, 2023, that is to say; seven days from the date he was supplied with a copy of an order. The first Respondent has contended that there was no need to wait for a copy of an order since the law has not set it as one of the requirements for filing the bill of costs. As a matter of practice, a copy of any order is of paramount importance for filing the bill of costs. In **Regional Manager TTCL v. Othman Mbarouk & 21 Others** (supra), it was held that:

"To express at once, I entirely agree with Mr. Mohamed that the dismissal Ruling is a vital document for otherwise how would the Court and the adversary party be seized of

the fact that the application was, indeed, dismissed for non-appearance as well as the reasoning comprised in the decision."

The Applicant has averred further that he filed the application on 19th May, 2023, however it was admitted on 23rd May, 2023 and it was discovered to have been out of time. As far I am concerned, I have noticed that the Applicant filed his application for bill of costs on that date but it encountered challenges in its admission.

Without going wasting more time discussing this application, I am satisfied that the Applicant has adduced sufficient reasons to suffices for the grant of an extension of time for the Applicant to pursue his application for bill of costs.

Consequently, this application is allowed and the Applicant is granted thirty (30) days from the date of the delivery of this ruling to file his application for bill of costs. I make no order for costs. It is so ordered.

DATED and DELIVERED at **SONGEA** this 11th day of September, 2023.




U. E. MADEHA

JUDGE

11/09/2023

COURT: Ruling is read over in the presence of Mr. Alex Nyoni (advocate), holding brief for Mr. Respicious R. S. Mukandala, the Counsel for the Applicant and in the absence of the Respondents. The Respondents to be informed. Right of appeal is explained.




U. E. MADEHA

JUDGE

11/09/2023