

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA SUB-REGISTRY)

AT ARUSHA

MISCELLANEOUS CIVIL APPLICATION NO.25 OF 2023

*(Originating from Taxation Cause No.165 of 2020 District land
Housing Tribunal for Arusha and Miscellaneous Civil Application No.
88 of 2022, High Court of the United Republic of Tanzania at Arusha)*

FAUSTINE DAVID SHAURI.....APPLICANT

VERSUS

BANK OF AFRICA TZ LTD.....1ST RESPONDENT

MEM AUCTIONEERS AND GENERAL BROKERS.....2ND RESPONDENT

RULING

23/02/2024 & 15/03/2024

KIWONDE, J.:

The applicant, one Faustine David Shauri, filed an application by way of chamber summons supported by his affidavit praying for the court orders below:

- a) That, this court be pleased to extend time for the applicant to file application for reference against the ruling in Taxation cause No. 165 of 2020 out of time.

b) Any other reliefs this court may deem fit and just to grant.

The 1st respondent filed a counter affidavit refuting the facts deposed by the applicant, and so, the matter was ripe for hearing. On 14th December 2023 it was agreed by the parties and ordered by the court that the application be disposed of by way of filing written submissions and both sides did. For the purposes of putting the records clear, the 2nd respondent never filed defence, written submissions nor appear in court.

In his submissions in-chief, the applicant's reasons for delay to file application for reference in time are that from the date the impugned decision by the District Land and Housing Tribunal, that is to say, 5th July 2022 to the date the High Court granted leave to refile the application, 21st February 2023, he was busy prosecuting the application in this court which period has to be excluded when reckoning limitation period to file reference to this court.

According to the applicant, he has delayed to do so for three (3) days since he filed this application on 17th March 2023. He urged this court to consider factors enumerated in **Lyamuya Constructions Company Ltd Versus Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, the decision of the Court of Appeal of Tanzania at Arusha, (unreported).

Besides that, the applicant alleged illegality apparent in the decision by the taxing tribunal as it awarded cost against him while received legal aid. So, he submitted that it was contrary to section 33 (1)(2)(3) of the Legal Aid Act, which allows cost to be awarded against party who receives legal aid in exceptional circumstances; therefore, this can be corrected by the superior court, that there is a chance of success; citing the case of **Transport Equipment Ltd Versus D. P Valambia** [1993] T. L. R 91.

Also, the applicant argued that the respondent will not be prejudiced by this court enlarging time to file reference.

In reply, the 1st respondent submitted that the applicant has not fulfilled any of the conditions set in **Lyamuya Constructions Company Ltd** case (supra). The 1st respondent said the applicant has not accounted for each day of delay from 21st February 2022 when miscellaneous Application No.88 of 2022 was withdrawn to 17th March 2023 when this application was filed.

Apart from that, the 1st respondent said according paragraph 8 of the applicant's affidavit, the period of delay to file application for reference is 389 days. It is argued that the affidavit is the main pleading in which the 1st respondent is bound. The statements that the applicant has delayed

for three (3) days are from the bar, this court to consider paragraph 8 of the affidavit supporting the application.

The 1st respondent said even if the days are calculated from the date when the Application No. 88 of 2022 was withdrawn to 17th March 2023, there are twenty-four (24) days of delay which the applicant had to account for; he referred to **John Dongo and others Versus Lepasi Mbokoso**, Civil Application No. 14/01 of 2018, Court of Appeal of Tanzania at Arusha and **Wambele Mtumwa Shahame Versus Mohamed Hamis**, Civil Reference No.8 of 2016, Court of Appeal of Tanzania at Dar-es Salaam (both are unreported).

As to illegality in the decision of the taxing master, the 1st respondent said it was an afterthought for it was raised when the applicant failed to account for each day of delay. Also, illegality has to be on the face of records which is not shown under paragraph 9 of the affidavit supporting the application. The 1st respondent prayed this court to dismiss the application with cost.

There were no rejoinder submissions by the applicant.

From the pleadings and the written submissions, the main issue for determination is whether there is sufficient cause shown to grant an order for extension of time for the applicant to file reference out of time.

It is now settled legal principle that the court, in its discretion, can grant an order extending time for the applicant to file application out of time if sufficient cause is shown. This is stipulated under rule 8 (1) of the Advocates Remuneration Order, 2015.

Also, under rule 7 (1)(2) of the Advocates Remuneration Order, 2015, a party aggrieved by the decision of the taxing master, can file reference to a single judge of the High Court within a period of twenty-one (21) days. If such period available for filing reference lapses, the applicant has to apply for extension of time upon establishing sufficient reason.

According to the case laws cited above, **Lyamuya Constructions Company Ltd Versus Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 and **Mohamed Salum Nahdi Versus Elizabeth Jeremiah**, Civil Application No. 474/01 of 2016, Court of Appeal of Tanzania at Dar-es Salaam (unreported), among the factors to consider if sufficient cause has been established include; length of time of delay, reasons for delay, illegality apparent in the impugned decision, whether grant of extension order will be prejudicial to the adverse party, if the applicant was not diligence to pursue his rights and whether the applicant has accounted for each day of delay.

In the application at hand, it is true that the period which the applicant conducted judicial proceedings in court has to be excluded when computing time of delay. This position of the law was stated in **Geita Gold Mining Limited Versus Anthony Karangwa**, Civil Appeal No. 42 of 2020, Court of Appeal of Tanzania sitting at Mwanza (unreported). The applicant, under paragraph 6 of the affidavit said on 21st February 2023 he withdrew Civil Application No. 88 of 2022 with leave to refile it. Therefore, the period from 5th July 2022 when the taxing master handed down the decision on award of cost to 21st February 2023 has to be excluded since the applicant was involved in prosecuting the application which for some reasons, had to be withdrawn. For that matter, period of delay to file reference to this court started to run against the applicant from 21st February 2023.

It was the argument by the applicant that he has delayed for only three (3) days, at the same time, he said the delay is for 245 days according to paragraph 8 of his affidavit. The 1st respondent said the applicant has delayed for 389 days and later, he said 24 days of delay which he has not even accounted for. Just as I have pointed above, the reference to the High Court against the decision of the taxing master is to be made within a period of 21 days. So, counting from 21st February 2023 to the filing of

this application on 17th March 2023, the period of 21 days lapsed on 13th March 2023. It is apparent, thus, that the period of delay is three (3) days which the applicant had a duty to account for each day of delay.

It is very unfortunate that the applicant did not account for each day of delay as to why he did not take action for all such period. For that matter, I concur with the counsel for the 1st respondent that the applicant slept over his rights to his detriment. From the 21st February 2023 when he was allowed to refile the application, yet he waited until the period elapsed and no reasons are given. Also, the applicant has not managed to account for each day of delay.

Furthermore, the applicant alleged illegality in the impugned decision as one of the reasons for this court to extend time for him to file reference in this court. This is deponed under paragraph 10 of the affidavit in support of the application. However, in law, such illegality must be apparent enough to require intervention by the superior court. But the applicant seeks to challenge the decision of the taxing master in Taxation Cause No. 165 of 2020 by G. Kagaruki, Chairman on reason that the applicant was merely legally aided. He argued that a person who received legal aid should not be condemned to pay cost of the suit unless there are exceptional circumstances.

It should be borne in mind that the taxing master merely taxes what was ordered in the main suit or application or appeal. The applicant is shown to have been ordered to pay cost in the Land Appeal No. 28 of 2017. If the applicant was aggrieved by such order of cost, he had to challenge it. In so far, the order remained unreversed, the taxing master in Taxation Cause No. 165 of 2020 just determined the amount of cost to be taxed. So, the ground of illegality in the decision of the taxing master has not been established nor is it apparent on the face of records.

Eventually, no sufficient cause has been established for the court to grant extension of time to the applicant to file reference out of time. The application is dismissed for lack of merits. No order as to cost since the applicant receives legal aid.



F.H. Kiwonde

Judge

15/03/2024.

Court: Ruling is delivered in court room in the presence of the applicant in person, Miss Kerry Mra counsel for the 1st respondent and Mohamed (RMA) but in the absence of the 2nd respondent this 15th March 2024 and the right of appeal is explained.



F.H. Kiwonde

Judge

15/03/2024.

