

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.502 OF 2023**

*(Arising out of Bill of Costs No. 249 of 2022 of this Honorable Court  
between the same parties herein)*

**STAR MEDIA (T) LTD & ANOTHER .....1<sup>ST</sup> APPLICANT**

**EPHANIA SAMSON RUHANYALA.....2<sup>ND</sup> APPLICANT  
VERSUS**

**GIDEON WILLIAM SHIRIMA.....RESPONDENT**

**RULING**

*Date of last Order: 28<sup>th</sup> October 2023*

*Date of Ruling: 3<sup>rd</sup> November, 2023*

**MWAIPOPO, J**

This is an application for extension of time filed by Star Media (T) Limited and Ephania Samson Ruhanyala herein to be referred to as the applicants against Gideon William Shirima, the Respondent. The Application is made under the provisions of Rule 7(1) & (2) and Rule 8(1)&(2) of the Advocates Remuneration Order GN. NO. 264/2015, seeking leave of this Court to extend time within which the Applicants may be allowed to lodge an application for Reference against the Ruling in Bill of Costs No.249/2022, made by Hon. C.M Kisongo-Deputy Registrar/Taxing Officer on the 19<sup>th</sup> day of July, 2023 and any other orders this Court may deem fit to grant. The application is supported by separate affidavits of Joachim Shilula and Ephania Ruhanyala, sworn in on the 11<sup>th</sup> of August 2023. The Respondent, on his part, filed a Counter Affidavit to oppose the application which was sworn in on the 25<sup>th</sup> of September, 2023.

*Mwaiipo*

During the hearing of the application, the applicants enjoyed the services of the learned Advocate, Catherine Dyasenga, who was holding brief for Maghai Advocates, with instructions to proceed, whereas the Respondent was represented by the learned Advocate Kephas Mayenji.

In her oral submissions, the Counsel for the applicants took off by praying for the Court to adopt the Chamber summons and joint affidavit of the first and second applicants to form part of her oral submissions and proceeded to submit on the reasons for requesting extension of time. She informed the Court that the application has been brought under Order 8(1) of the Advocates Remuneration Order of 2015, which gives this Honourable Court powers to extend time for filing a Reference upon sufficient cause being shown by the Applicants. She elaborated that the cited Order originates from Order 7(2) of the Advocates Remuneration Act, 2015, which states that; a Reference shall be instituted by way of Chamber summons supported by an Affidavit and be filed within 21 days from the date of the decision. She thus pointed out that, the issue before this Court is whether the applicants have shown or demonstrated sufficient cause in the application, to warrant this Court to grant them an order for extension of time. To buttress her point, the learned advocate cited the case of **Renatus Nsangano and two others Versus Selestine Mlela Shayo, Misc. Land application No. 23/2023, HCT Mwanza** in which **Kilimajenga, J** while citing the case of **Benedict vs Consolidated Holdings Corporation as an Official Receiver of Tanzania Film Company Limited, Civil application No. 366/01/2017, CAT**, discussed the concept of what amounts to good cause and the criteria for guiding

courts in exercise of its discretion. The Honourable stated; and I quote him;

**".....the Court must consider factors such as the lengthy of delay, the degree of prejudice the respondents stand to suffer if time is extended, whether the applicant was diligent, whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged and the overall importance of complying with prescribed timelines".**

Based on the above quotation, she amplified that the decision in the Bill of Costs No. 249/2022 against which the applicants intend to file a reference, was delivered by Honourable C.M Kisongo on the 19<sup>th</sup> of July 2023. Following the delivery of the decision, the applicants applied to be supplied with certified copies of proceedings, and ruling and drawn order for reference purposes. A copy of the application letter dated 20<sup>th</sup> July 2023 was attached to the application as **annexture A2**. According to paragraph 5 of the Affidavits of the Applicants, they were supplied by the Court with a certified copy of the ruling on the 10<sup>th</sup> of August 2023 i.e. after a lapse of 21 days which was well beyond the time within which they were required by law to file a Reference hence the delay should not be attributed to them.

The Counsel went on to cite the issue of illegality as a ground for extension of time. In driving her point home, she submitted before the court that, Hon. C.M Kisongo, Deputy Registrar and Taxing Officer, proceeded to determine the Bill of Costs no. 249/2023 in total disregard

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of the fact that the applicants had lodged a notice of appeal and that the Court of Appeal vide the case of Star Media (T) Limited and another versus Gideon William Shirima Civil Application no. 279/17/2023 Dar es salaam, had issued an order of staying execution in respect of the impugned Bill of costs. She attached a copy of the Ruling of the Court of Appeal annexed to the application and marked as Annexure **A3**. She submitted further that; the decision which the applicants seek to challenge has resulted from consolidated land applications no. 463/2010 and 34 of 2011 which were before the District Land and Housing Tribunal, whose execution of its Decree was stayed (exparte) pending hearing and determination of the application interpartes. It was her contention that despite the fact that the Court of Appeal (Mwandambo J) barred the High Court to proceed with execution of the Decree, which resulted into case no. 249/2023 (Application for Bill of Costs), the High Court through Hon. Kisongo DR, still proceeded to determine it. Further, under paragraph 7(2) of the adopted affidavit of the applicants, the latter contended that Hon. Kisongo DR awarded the Respondent TZS 2,400,000 out of the total claimed amount of TZS 30,550,000 contrary to law. The counsel submitted that these are illegalities, which the applicants seek to address and in this regard the Counsel cited the case of **Nsangano (Supra)** to cement her view that it is a sufficient cause to constitute a good ground for extension of time

Submitting in rebuttal, the Counsel for the respondent began by adopting the Counter Affidavit sworn in by the Respondent, filed on the 26<sup>th</sup> of September 2023. In his Counter Affidavit, the Respondent strongly disputed the contents contained in the Applicants' Affidavits. Further, during his oral submissions, the learned Counsel vehemently

objected to the application for extension of time for the following reasons;

**One,** he disputed the argument that the Court delayed in supplying the applicants with the certified records as stated under para 9 of the Applicants' Affidavits since, he stated, that the law governing References or Bills of Costs doesn't require applicants to file a Reference accompanied by a copy of a ruling and drawn order. To fortify his assertion, the Counsel cited Order 7(1) (2)(3) and (4) of the Advocates and Remuneration Order, 2015 which only requires an application for Reference to be instituted by way of an Affidavit and be filed within 21 days from the date of the decision. He further submitted that the records which the counsel for the applicant is referring to are kept within the same Court and are readily available for reference whenever needed, therefore there was no need for the applicants to request and wait for the same to be supplied by the Court. He thus concluded that the reasons furnished by the applicants are not sufficient to move the court to grant an extension of time.

**Two,** with regard to the ground of illegality cited by the applicants, the counsel for the respondent submitted that; the ex parte decision which was given by the Court of Appeal in the case between the same parties, Civil Application No. **279/17/2023** did not concern the Bill of Costs No. 249 of 2022 which originates from Land appeal no. 291/2021 rather it dealt with stay of execution in consolidated applications No. 463/2010 and 34/2011, pending hearing and determination of the application inter partes. He referred the Court to page 2 para of the ruling which states as follows;

**"Accordingly, I grant the application for an exparte order and direct that execution of the decree of the DLHT subject of the Consolidated Execution No. 463 of 2010 and 34 of 2011 is hereby stayed pending hearing and determination of the application *interpartes* by the full court as prayed in the notice of motion".**

The Counsel further dismissed the case of **Nsangano** cited by the Counsel for the Applicants for being irrelevant as the facts contained in that case are distinguishable from the facts of the case at hand.

In her rejoinder, the Counsel for the Applicants, while agreeing with the counsel for the respondent that Order 7 of the Advocates Remuneration Order, 2015 requires References to be instituted by way of a Chamber Summons to be supported by an Affidavit, she stated further that an Affidavit is a written document of someone's evidence supporting an application hence it was imperative for the applicants to be timely supplied with records to enable them to prove their case against that of the respondent. She asserted that, since the applicants intend to challenge the determination of the Bill of Costs no. 249/2023, they must attach an impugned ruling, drawn order and proceedings. The counsel further rejected the contention by the Respondent that those documents need not be supplied by the Court nor requested by the applicant since they are in the same court. She stressed that such an argument by the Counsel for the respondent is lame and not supported by any law. She contended that the delay to be supplied with the records is a sufficient cause that can warrant this court to grant an extension of time.

Lastly, with regard to the issue of illegality, she reiterated her submissions related to an ex parte ruling delivered by Hon Mwandambo J, cited hereinabove, which had the effect of staying execution of the Decree which gave rise to the Bill of Costs and concluded that the Bill of Costs no. 249/2023 which the applicants intend to challenge by way of a Reference originates from consolidated Execution no. 463 of 2010 and 34 of 2011, which resulted into Land Appeal No. 291/2021 whose Decree was stayed by the Court of Appeal of Tanzania.

I have carefully considered the rival submissions between the parties and court records. The central issue for consideration is whether the applicants have adduced sufficient reasons to warrant this court to extend time within which the applicants may be allowed to lodge an application for Reference against the Ruling in the Bill of Costs No. 249/2022 between the same parties. It is a settled principle of law that, for the court to grant extension of time, the applicant must advance sufficient reason or good cause for delay. In the case of **Benedict Mumelo Vs Bank of Tanzania, Civil Appeal No. 12/2012** the **Court of Appeal** held that;

**"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient reason".**

Based on the above-cited quotation it can be deduced that, one, as a matter of general principle, it is in the discretion of the Court to grant

extension of time. Two, that discretion is judicial and must be exercised according to rules of reason and justice. In the case of **MZA RTC Trading Company Ltd versus Export Trading Company Ltd, Civil Application No. 12 /2015, CAT Mwanza**, the court observed that;

**“Judicial discretion is the exercise of judgment by a Judge or Court based on what is fair, under the circumstances and guided by the rules and principles of law, the Court has to demonstrate however, briefly, how that discretion has been exercised to reach, the decision it takes”.**

Thus, extension of time should only be granted when sufficient reason or good cause has been advanced to the satisfaction of the court. This can always be assessed based on the circumstances and facts of each case. Through this assessment, the Court is obliged to determine whether the applicant has advanced good cause before granting extension of time. In the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustees of Young women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT Arusha**, the Court of Appeal formulated some guidelines for consideration by Courts before granting extension of time. The Court enumerated the following four guidelines;

- a) The applicant must account for all the period of delay*
- b) The delay should not be inordinate*
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take*



*d) Other sufficient reasons such as the existence of a point of law of sufficient importance such the illegality of the decision sought to be challenged.*

Reverting to the application at hand, the ruling now sought to be challenged was delivered on **19<sup>th</sup> day of July 2023**. The Applicants then applied for copies of proceedings on **20<sup>th</sup> July 2023** which was just a day after the decision was given. The Court then supplied the applicants with a certified copy of ruling on **10<sup>th</sup> August 2023**, after a lapse of 21 days or prescribed time for lodging a reference. (Refer to para 5 of the Affidavits of both applicants. Further, according to para 6 of their Affidavits, the Applicants then prepared this application for extension of time on the **11<sup>th</sup> August 2023** and contended to file it through JSDS, which was just a day later after they were supplied with a copy of the certified ruling. However, upon careful perusal of the Application contained in the file, I noticed that the documents were filed in the Registry on the 15<sup>th</sup> of August 2023 upon payment of the requisite fees on the same date. **(See the case of Ahmed Mohamed Suud and another vs Mohamed Suud, Civil application no. 12/17 of 2019 CAT Dar es salaam)** where the Court of Appeal affirmed the position that a document is taken to have been lodged on the date when it was endorsed by the Registrar on payment of the prescribed fees. The Exchequer Receipt attached to the application shows that fees for filing this application were paid and received by the Court on 15<sup>th</sup> of August 2015 which also reads on the document as the filing date.

With regard to the issue of computation of the period of time, I have no flicker of doubt in my mind that the provisions of section 19 (2) and (3)

of the Law of Limitation Act Cap 89 RE 2019 expressly allow automatic exclusion of the period of time requisite for obtaining records. **(See also the case of Mohamed Salimini Vs Jumanne Omary Mapesa, Civil appeal No. 345/2018 (Unreported))** where the Court of Appeal affirmed that section 19(2) of the Law of Limitation Act CAP 89 RE 2019 obliges courts to exclude the period requisite for obtaining such records.

I am thus of the view that the period between 19<sup>th</sup> July 2023 and 10<sup>th</sup> August 2023 ought to be excluded for purposes of filing a Reference as per section 19(2) of the Law of Limitation Act Cap 89 RE 2019.

Based on the facts contained in the affidavit, the applicants have accounted for the period of delay that was spent while waiting for the court to supply them with the certified records. They have managed to prove before the Court that they were diligent in pursuing their matter and following up on the essential documents, which are necessary in the preparation of their Reference in time. Their actions are a proof of the fact that they were neither negligent nor sloppy in the prosecution of the action that they intend to take. This is evidenced by the fact that following the delivery of the Judgement they immediately applied for the records just a day after the decision and managed to prepare their Application a day after they had received the application and filed it in Court within five days of receipt of the records, i.e. on the 15<sup>th</sup> Of August 2023 after payment of filing fees.

Based on the sequence of events narrated above, it is palpably clear that there was no any inordinate delay occasioned by the Applicants. I find five days within which the applicants had to prepare and file their application to be reasonable for purposes of being considered for a

grant of extension of time. (See the case of **Renatus Nsangano and two others Versus Selestine Mlela Shayo, Misc. Land application No. 23/2023, HCT Mwanza, Benedict vs Consolidated Holdings Corporation as Official Receiver of Tanzania Film Company Limited, Civil application No. 366/01/2017, CAT**) all cited by the Counsel for the applicants and **Lyamuya Construction Company Ltd Versus Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT Arusha**)

All said and done, I find this ground alone to be sufficient to dispose this Application for extension of time. That said, I see no reason to proceed with determination of the ground of illegality.

I am therefore satisfied that based on the information contained in the affidavits of both applicants, the trend of events narrated in obtaining the records fits squarely within the first three criteria developed in the case of **Lyamuya Construction (supra)**. The Applicants have been diligent in the prosecution of the action they intend to take, they have accounted for each day of delay and they filed their application within reasonable days after obtaining the records.

I accordingly proceed to allow the application for extension of time within which the applicants may be allowed to lodge a Reference against the Ruling in the Bill of Costs No. 249/2022 made by Hon. C.M Kisongo Deputy Registrar/ Taxing Officer on the 19<sup>th</sup> day of July, 2023. The Reference must be lodged within 21 days of the delivery of this ruling. Costs shall abide the results of the intended Reference.

It is so ordered.

**DATED at DAR ES SALAAM this 3<sup>rd</sup> day of November, 2023**



*S.D. Mwaipopo*  
**S.D. MWAIPOPO**

**JUDGE**

**03/11/2023**

The ruling delivered this 3<sup>rd</sup> day of November, 2023 in the presence of Advocate Alphonse Katemi holding brief for Catherine Dyasenga for the Applicants and in the absence of the Respondent, is hereby certified as a true copy of the original.



*S.D. Mwaipopo*  
**S.D. MWAIPOPO**

**JUDGE**

**03/11/2023**