

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

**MISC. LAND APPLICATION NO. 379 OF 2023**

*(Arising from Bill of Costs No. 131 of 2022)*

**MUSTAQUIM MURTAZA DARUGAR ..... APPLICANT**

**VERSUS**

**MAGRET JOHN MBOMBO ..... 1<sup>ST</sup> RESPONDENT**

**GERVAS NDYAMKAMA ..... 2<sup>ND</sup> RESPONDENT**

**EMMANUEL MOLLEL ..... 3<sup>RD</sup> RESPONDENT**

*Date of Last Order: 19.10.2023*

*Date of Ruling: 23.11.2023*

**RULING**

**I. ARUFANI, J**

This ruling is respect of an application for extension of time within which to file in the court an application for reference in respect of the ruling of the Taxing Officer (Hon. Chugulu, Deputy Registrar) dated 30/03/2023 delivered in the Bill of Costs No. 131 of 2022. The application is made under Rule 8 (1) of the Advocates Remuneration Order, 2015 (hereinafter referred as the Advocate Remuneration Order) and is supported by the affidavit of the applicant herein. The respondents filed in the court their joint counter-affidavit to oppose the application and with leave of the court the application was argued by way of written submissions.

Mr. Saiwello T. J. Kumwenda, learned advocate drew and filed in the court the submissions on behalf of the applicant. He stated in his submission that, the Advocates Remuneration Order allows an

aggrieved party to file an application for reference to a High Court Judge if he is dissatisfied with the decision of the Taxing Officer within 21 days from the date of delivery of an impugned decision and cited in his submission Rule 7 (1) and (2) of the Advocates Remuneration Order. He stated that, the decision of the Taxing Officer was delivered on 30/03/2023 hence the application for reference was supposed to be filed in the court by 21/04/2023 but due to unavoidable reasons the said application was not filed within the prescribed period of time.

He said the delay was not only due to the applicant's sickness and a referral trip to India but he was sick even before the ruling date because he was already in India from 02/03/2023 and communication to his advocate was impossible. He said although the applicant came back from India on 04/04/2023 but he was still sick until 24/05/2023 when they started drawing documents to be filed in court which were completed on 30/05/2023.

He argued that, the exercise of following up medical documents was completed on 04/06/2023 and the said documents were attested on 05/06/2023 and sent for filing in the court on 07/06/2023. He said the documents were admitted in the court on 25/06/2023 and fees was paid on 26/06/2023. The counsel for the applicant argued that, the communication between him and his client while he was in India

was very difficult so he had to wait for him to come back to give instruction of whether to proceed with the application or not.

He said the ruling of the Taxing Officer is full of errors which form part of illegalities as the Taxing Officer did not consider sections 110 (1) and (2) and 111 of the Evidence Act. He said if the respondents alleged to have paid "such money" then they ought to have attached receipts. He relied on Rule 58 (1) of the Advocates Remuneration Order, section 36 (1) and 86 (1) (a) (b) of the Tax Administration Act CAP 438 R.E 2019.

He submitted that, since no EFD receipts were attached to the bill of costs it means the money which was demanded and granted by the Taxing officer was illegally obtained for stealing government money which was to be collected by the Tanzania Revenue Authority. He relied on the cases of **Theresia Mahoza Mganga V. The Administrator General (RITA)**, Civil Application No.85 of 2015 (unreported) and **Tanzania Portland Cement Company Limited V. Khadija Kuziwa**, Civil Application No. 437/01 of 2017 (unreported) where illegality was accepted as sufficient reason for extending time. He concluded by praying for extension of time based on the principles of illegalities to be granted to put the matter and records right.

The respondents jointly drew and filed their submission in reply in the court. They stated it is settled law that for an application for extension of time to be granted, every day of delay has to be accounted for and this is exercised upon the court being satisfied that there are reasonable and sufficient cause. The applicants relied on the cases of **Sebastian Ndaula V. Grave Rwamafa (Legal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014 and **Yazid Kassim Mbakileki V. CRDB (1996) Limited Bukoba Branch & Another**, Civil Application No. 412/04 of 2018, both decided by the Court of Appeal at Bukoba (unreported).

The respondents stated that, for the court to exercise the powers to grant extension of time it must have sufficient material before it to account for the delay. The applicant must also show diligence in prosecuting the intended action. The respondents cited the case of **MZA RTC Trading Company Limited V. Export Trading Company Limited**, Civil Application No. 12 of 2015 CAT at Mwanza (unreported) to support this assertion.

The respondents continued to submit that the applicant has failed to adduce sufficient grounds to move the court to exercise its discretionary power in her favour. They pointed out that neither in the affidavit nor in the submissions where sufficient reason and proof

as to how the alleged financial crisis and sickness has affected the applicant from filing the application for reference in time was stated. They pointed out that the applicant's argument that he was in India for treatment has no merit because he was back on 04/04/2023 and he still had 17 days for filing the application, but he did not do so.

They argued that, the current application for extension of time has been filed 53 days after the applicant return from India and there is no proof that sickness was the cause for the applicant's failure to file the application. They relied on the case of **Nyanza Roadworks Limited V. Giovanni Guidon**, Civil Application No. 75 of 2020, CAT at Dodoma (unreported) to support their argument. The respondents argued that there is nothing on the affidavit supporting the application suggesting that, at the time the applicant was in Dar es Salaam on 04/04/2023 he was unable to file the application for reference due to sickness or financial crisis.

As for the allegation of illegality on the decision of the Taxing Officer the respondents argued that, there is no illegality in the decision which can move the court to grant extension of time as the illegality is not apparent on the face of the record rather it is a matter which needs long drawn argument. They relied on the case of **Elias Kahimba Tibenderana V. Inspector General Police & Another**,

Civil Application No. 388/01 of 2010, CAT at DSM (unreported). To support their submission. They submitted that, the issue of the court to grant the costs without EFD receipts does not constitute a ground for exercising court's discretion in the applicant's favour. They prayed for the application to be dismissed with costs.

Having carefully considered the submissions from both sides and after going through the affidavit and counter affidavit the court has found the issue to determine in this application is whether the applicant deserve to be granted extension of time to file in the court an application for reference in respect of the decision of the Taxing Officer delivered in the bill of costs filed in the court by the respondents.

It is a settled principle of the law that extension of time is granted on discretion of the court. However, for the court to exercise such discretion, the applicant has the duty to place before the court sufficient reasons for the delay, so that the court can judiciously exercise such discretion. The case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha (unreported) provides for guidelines, though not exhaustive, for the grant of an order for extension of time.

In the foregoing cited case, the guidelines to be considered in determine applications of this nature are as follows; (i) the applicant must account for all the period of delay, (ii) the delay should not be inordinate, (iii) the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take, and; (iv) if the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance.

In the case at hand, one of the applicant's main reasons for the delay is that he was "very sick" and he was in India for treatment. The applicant has annexed the medical reports from hospitals in India. The term "very sick" by the counsel for the applicant is very subjective because the medical reports annexed to the affidavit as Annexure E collectively only reflect that the applicant underwent general check-up. There is nothing in the reports that indicates that the applicant was admitted in the hospital. Most of the reports show the results to be "normal" or "negative".

Therefore, in essence, the applicant was not in a very serious condition to the extent of failure to know what was going on and what he ought to have done in terms of communication or giving instruction to his advocate as he left knowing that there was a case, and a ruling was to follow. In principle there was no seriousness on the part of the

applicant related to the case because there is an inclination of negligence in the trend of events on the part of the applicant considering that he was not "very sick" as stated hereinabove. In the premises the court has found the allegation of sickness has no merit.

The counsel for the applicant tried to account for the delay in his submissions that, the applicant left for India on 02/03/2023, returned on 04/04/2023, he started to give instructions to work on this application on 25/05/2023 and ultimately the application was filed on 26/06/2023. However, the account for the delay which have been narrated in the submissions of the counsel for the applicant was not pleaded in the affidavit, so it was not evidence. It is trite law that submissions are mere narrations of the evidence on record and in this present case the affidavit. Giving an account of delay in the submissions alone is a mere story telling by counsel for the applicant from the bar without evidence. Therefore, the accounting of the delay by the counsel for the applicant in his submission has no merit and is supposed to be disregarded.

In any case and without prejudice to what is stated above, the applicant had 17 days after arrival from India before the deadline of filing the reference in the court. However, the application was filed in the court after the elapse of 53 days after the applicant returned from



India. Since as stated hereinabove it has not been established the applicant was "very sick" as alleged by the counsel for the applicant, the inaction and delay by the applicant is questionable and inordinate and cannot stand as reasons to warrant grant of extension of time.

The applicant also raised the issue of illegality which is noted in the last paragraph of the affidavit of the applicant and has taken the best part of the submissions of the counsel for the applicant. The illegality that was raised by the applicant was that, the Taxing Officer erred in awarding costs without proof of EFD receipts. This issue of none production of the EFD receipt was not raised by the parties during the hearing of the bill of costs but it was simply stated by the counsel for the applicant that the bill of costs was not substantiated by using receipts.

The court has gone through Rule 58 (1) of the Advocate Remuneration Order relied upon by the counsel for the applicant to establish there is illegality in the impugned decision of the Taxing Officer. The court has found that, although the stated rule states receipts or vouchers for all disbursement charged in a bill of costs shall be produced at taxation of bill of costs but as provided in the

cited provision of the law production of the receipts or vouchers is done if the Taxing Officer has required the same to be produced.

If the Taxing Officer has not required the same to be produced it cannot be said failure to attach the voucher or receipt for all disbursement to the bill of costs it is an illegality which can justify grant of an order for extension of time. The above finding of this court is getting support from the decision of the Court of Appeal in the case of **Tanzania Rent a Car Limited V. Peter Kimulu**, Civil Reference No. 9 of 2020 CAT at DSM (unreported) where it was held that, it is not a requirement of the law for the EFD receipt to be attached to the bill of costs. As for what is provided under section 36 (1) and 86 (1) (a) and (b) of the Tax Administration Act the court has found the stated provisions of the law are not applicable in the taxation of bill of costs.

The court has found the issue of illegalities to be used as a ground of granting extension of time has been considered in number of cases. When the Court of Appeal was dealing with issue of illegality as a ground of granting application of extension of time in the case of **Elias Kiguha Marwa V. Standard Chartered Bank Tanzania**

**Limited**, Civil Application No. 600/16 of 2021 (CAT) (unreported) it stated as follows: -

*"...the principle enunciated in the **Valambia's Case** on relevancy of illegality in an extension of time is based on the presupposition that, the extension of time is granted for the purpose of enabling the higher court to correct the illegality complained of. It would thus go without saying that, for the extension of time to be relevant, the intended action must be such that it can be the avenue for correcting the illegality."*

While being guided by the position of the law stated hereinabove the court has found in the present application there is nothing that needs correction by the court as explained hereinabove. The court has found the applicant has not managed to satisfy the court there is a point of sufficient importance which need to be put right by the court in the decision delivered by the Taxing Officer which the applicant is seeking for extension of time to file in the court reference to challenge it.

Further to what is stated above, it is also the court's principle that for illegality to stand as a reason for extension of time, it should be apparent on the face of the records. The issue of illegality as a ground of granting extension of time was discussed extensively in the

cases of **Moto Matiko Mabanga V. Ophir Energy PLC & Others**, Civil Application No.463/01 of 2017 CAT at DSM (unreported) and **Elias Kahimba Tibenderana** (supra). The Court of Appeal stated in the case of **Moto Matiko Mabanga** that, once it is established that illegality is clearly visible on the face of record, then it can be termed as a sufficient cause to warrant extension of time.

However, in the present case the alleged illegalities that have been raised by the applicant are not apparent on the face of the record because whether it was illegal for the Taxing Officer to award the costs would require a long-drawn process of digging into evidence and this issue has no sufficient public importance to constitute a ground for exercising the court's discretion in the applicant's favor. (see **Elias Kahimba Tibenderana** (supra). Consequently, the alleged illegality in this application does not constitute a good cause to warrant grant of extension of time to the applicant to file in the court the application for reference out of time.


For reasons advanced hereinabove, the court has found there are no sufficient reasons which have been advanced by the applicant to warrant the court to exercise its discretionary powers to grant extension of time for the applicant to file in the court the application

for reference. Consequently, the application is hereby dismissed with costs for want of merit. It is so ordered.

Dated at Dar es Salaam this 23<sup>rd</sup> day of November, 2023.

 *I. Arufani*  
**I. Arufani**  
**JUDGE**  
23/11/2023  
**Court:**

Ruling delivered today 23<sup>rd</sup> November, 2023 in the presence of Mr. Saiwello T. J. Kumwenda, learned advocate for the applicant, in the presence of the second respondent in person and in the absence of the first and third respondents. Right of appeal to the Court of Appeal is fully explained.

 *I. Arufani*  
**I. Arufani**  
**JUDGE**  
23/11/2023