

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO 27086 OF 2024

SALAAMAN HEALTH CENTRE APPLICANT.

VERSUS

STRATEGIES INSURANCE (T) LIMITED RESPONDENT.

RULING

MKWIZU, J:-

This is an application for an extension of time to file reference against the decision of the Taxing Master in Bill of costs No 27 of 2022 delivered on 7/8/2023. The application was taken under section 8(1) of the Advocates Remuneration Order, 2015 supported by the affidavit of Mr. Salum Nassoro Igangula the applicant's counsel

In the present application, the applicant intends to file a reference against the decision in a bill of costs No 27 of 2022 delivered on 7/8/2023. According to Order 7(2) of the Advocates Remuneration Order, 2015 (GN No. 264 of 2015) (the Advocates Remuneration Order) reference from that kind of a decisions must be lodged within twenty one (21) days from the date of the decision.

In substantiating the application herein, Mr. Nassoro argued that the delay in filing the intended reference is the delay in obtaining the copies of the ruling and drawn order. His contention is that the impugned ruling was delivered on 7/8/2023 but the same were served on the applicant on 12/10/2023 and that the applicant utilised the dates between 13 to 22/10/2023 to consult his lawyer who was on all the days engaged . The applicant managed to meet his lawyer on 23/10/2023 and that at that period he could not prepare the required documents because he was engaged in a criminal case No 218 of 2023 and 211 of 2022 before Mrisha J.

In response, Mr. Mathias advocate strenuously opposed the application. He faulted the applicant for failure to show good cause for extension of time. His contention was that the ruling on the bill of costs was rendered on 7/8/2023 but this application was belatedly filed on 28/11/2023 /12/2023 after a lapse of 88 days.

I have considered the application and the rival submissions. There are numerous authorities both by this court and the Court of Appeal establishing that in application for extension of time the court is vested with discretionary powers to grant or refuse that application and the duty of the applicant is to advance good cause for the court to exercise its

discretionary power . It is also established that what amounts to sufficient cause has to be considered depending on peculiar facts and circumstances of each case and the court must always be guided by the rules of reason and justice, and not according to private opinion, quirky inclinations. See for instance **Yusufu Same Vs Hadija Yusufu**, (supra), **Ireen Temu V Ngasa M. Dindi and Kinondoni Municipal Council**, (Supra), **Regional Manager, TAN ROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007; **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 and **Lyamuya Construction Company Limited V Borad of Registered trustees of Young women Christian Associations of Tanzania**, Civil Application No 2 of 2010(All unreported) to mention just a few. In the latter case, the Court of Appeal gave evocative factors to be considered in an application of enlargement of time namely accounting for all the period of the delay, the delay should not be inordinate, diligence and illegality if any in the impugned decision. The point was emphasized in **Wambele Mtumwa Shahame vs. Mohamed Hamis** (Civil Reference 08 of 2016) [2018] TZCA 39 where the case of **Shanti vs. Handocha** [1973] EA 2007 cited was instructive that:

*"The position of an application for extension of time is entirely different from an application for leave to appeal. **He is concerned with showing "sufficient reason" why he should be given more time and the most persuasive reason he can show is that the delay has not been caused or contributed to by dilatory conduct on his part. But there may be other reasons and these are all matters of degree.**"(emphasis added)*

In the application at hand, the applicant is contending that the 21 days prescribed by the law for filing the reference ended while following up the copy of the ruling and the drawn order which were availed to her on 12/10/2023. I am conscious of the principle that delay in being supplied with copies of the ruling and drawn order subject of the intended application is a good ground for the delay. See **Mumello vs. Bank of Tanzania** [2006] 1 EA 227 . Thus the period between 7/8/2023 and 12/10/2023 is pardonable.

As explained, the applicant's application was not filed immediately after she was supplied with the requisite document. It was filed on 30/11/2023. In his explanation, the period between 13 to 22/10/2023 was spent in searching for his lawyer who was unavailable . He met his lawyer on 23/10/2023 and that even from that date the lawyer could not prepare

the documents for he was engaged in a criminal session cases No 218 of 2023 and 211 of 2022 before Mrisha J .He was of a strong view that this period is also excusable for that reason.

Here engagement of a party's lawyer in a criminal case is paraded as a ground justifying delay. This explanation has indeed engaged my mind and my little research has failed to accommodate the reason given as sufficient enough to condone the delay. Mr. Nassoro is a lawyer who is conversant with the laws, courts procedures, and general consequences of time limitations prescribed by the law. He would have appropriately advised his client on the legal rights and obligations under the law and explains his actual practical and legal implications of the delay he was going to create by not acting promptly on the matter and allow him to engage another lawyer of his choice if he was so engaged. A 37 days delay because of waiting for an engaged lawyer is not to me a sufficient reason for the delay. Generally, there is no diligence shown in the action taken by the applicant to extend time.

It is a trite law that rules of procedure must be adhered to strictly unless justice clearly indicates that they should be relaxed. This was so observed by the court of Appeal in **Dr. Ally Shabhay V. Tanga Bohorajamaat** - Civil Application No. 48 of 1997 (unreported) citing with approval the English case in **Edwards V. Edwards** (1968) 1 W.L.R. 149, the Court said:-

"So far as procedural delays are concerned, Parliament has left a discretion in the courts to dispense with the time requirements in certain respects. That does not mean however, that the rules are to be regarded as, so to speak,



antique timepieces of an ornamental value but of no chronometric, so that lip service only need to be paid to them. On the contrary, in my view, the stipulations which Parliament has laid down or sanctioned as to time are to be observed unless justice clearly indicates that they should be relaxed."

Guided by the above authority I find the account given in support of the period between 23th October 2023 to 30th November 2023 insufficient to support the delay.

The unmerited application is thus dismissed with costs.

Order accordingly.

Dated at Dar es salaam, this 19th day of April 2024


 **E.Y. MKWIZU**
JUDGE
19/4/2024