

TANZANIA / JUDGMENT

Misc

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31 July 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC LAND APPLICATION NO. 10322 OF 2024 (Arising from the Ruling of the Taxing
Officer of the District Land and Housing Tribunal for Bagamoyo in Taxation Cause No. 134 of 2022
Original Land Application No. 143 of 2021 delivered on 25th March, 2024) ALLY MRISHO
MDOE..... APPLICANT VERSUS SOPHIA SALUM
ZANGILA..... 1st RESPONDENT MWANAISHA MALIZA.....2nd
RESPONDENT

RULING

25th June & 31st July, 2024 L. HEMED, J. This is an application for extension of time to present
reference against the decision of the taxing officer of the District Land and Housing Tribunal for
Bagamoyo delivered on 25th March 2024, in Taxation Cause No 134 of 2022. The application has
been preferred under Order 8(1) and (2) of the Advocates Remuneration Order, GN.No 263 of
2015. It has been supported by the affidavit of ALLY MRISHO MDOE. The respondents have
resisted the application through the joint counter affidavit affirmed by SOPHIA SALUM
ZAMGILA and MWANAISHA MAKIZA MLEKWA. During hearing, the Applicant was represented
by Mr Erick Simon learned counsel while the respondents enjoyed the legal service of Mr Baraka
Chipamba, learned advocate. Hearing was done by way of written submissions where parties
complied with the filing schedule. I have gone through the rival affidavit and submissions and
found that, the applicant has relied on three grounds. The said grounds are:-

- i. Delay in obtaining a copy of impugned ruling; ii. Diligence and persistence; and iii.
Illegality. I have opted to begin with the ground of delay in obtaining copies of ruling. In
regard to this ground, it was the submission of Mr Simon that the Applicant did not intend
the delay. According to him, the Applicant obtained the copy of impugned ruling late. It was
averred that the ruling was delivered on 25th March, 2024 and on 3rd April, 2024 the
Applicant requested for copies of the ruling but the same was supplied to him on 25th April
2024 when the requisite 21 days had already expired. To support his argument he referred
the court to the case of 2 Silas Katemi vs. Paul Mbwana and Another, Misc Land Case
Application No. 672 of 2017. He ended up praying the court to grant the application on the
ground of late supply of the copies of the ruling. In reply thereto, Mr Chipamba contended
that the reason for the delay in obtaining the copy of ruling is not justifiable because there

was no prove that the copy of ruling was obtained late. He submitted that copies of the ruling were ready for collection by 25th March,2024. The learned counsel was of the view that, the Applicant was negligent in collecting copies of the ruling timely. He glued his argument by the decision in Rosemary Katunzi vs Oscar Mhagama & Another, Civil Application No. 43/17 of 2022. Application for extension of time to present Reference against ruling on Bill of Costs like the one at hand is governed by Order 8(1) and (2) of the Advocates Remuneration Order, (supra). It provides thus:- 8.-/7? 77?e High Court may, subject to order 7 extend the time for filing a reference upon sufficient cause. [Emphasis added] The word "sufficient cause" has not been defined in the Advocate Remuneration Order (supra). Principally, the decision to extend time is within the discretion of the court. However, such 3 discretionary power must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. In Lyamuya Construction Company Limited v. Board of Registered Trustees of young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 the Court of Appeal set out the following guiding factors:- " a) The applicant must account for all the period for delay

- a) The delay should not be inordinate.
 - b) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and
 - c) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged." In the present case, the applicant has pleaded delay in obtaining a copy of the impugned ruling which was supplied to him on 25th April,2024. The days within which the Applicant ought to have presented his reference lapsed on 15th April, 2024. This implies that by the time the copies of the ruling were supplied to him, he could not file reference without the leave of the court. I have also discovered that 4 the Applicant applied for the copies of the ruling timely, on 3rd April
2024. This implies that the Applicant acted diligently in pursuing his cause. I have also noted that even after he was supplied with the copies of the impugned ruling, the Applicant acted promptly by presenting the instant Application on 3rd May, 2024. From the foregoing, I find that the ground of delay in obtaining the copy of the ruling is enough to grant the instant application. The Applicant is granted leave to present his reference within fourteen (14) days. Each party to bear its own costs. It is so ordered DATED at DAR ES SALAAM this 31st/ if July 2024 JUGDE 5

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Prepared on 13 October 2026 · Esheria