

TANZANIA / JUDGMENT

Augustino Nestory Sasi

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA MISC. LAND APPLICATION NO. 00001598 OF 2025 REF No. 202501221000001598 (Arising Taxation Cause No. 00007555 of 2024 of the High Court of Tanzania - Musoma Sub Registry) BETWEEN AUGUSTINO NESTORY SASI..... APPLICANT VERSUS BARRICK GOLD MINE LIMITED..... RESPONDENT

RULING

24th & 26th March, 2025 M. L. KO MB A, J.: The application at hand is for extension of time within which applicant may file his application for reference to challenge ruling and order of the taxing officer issued on 31/07/2024. The application is premised under section 14(1) of the Law of Limitation Act, Cap 89 R. E. 2019 and is supported by an affidavit sworn by the applicant Mr. Augustino Nestory Sasi. When served with affidavit, respondent through their advocate file counter affidavit and both was adopted in course of hearing of the matter. Background which gave rise of the application at hand is that, applicant and Page 1 of 9 respondent had Land Case at Kemambo Ward Tribunal in Case No. 28 of 2023 which parties settled. Respondent filed Revision Application No. 90 of 2023 District Land and Housing Tribunal for Tarime for the purpose of revising consent settlement but in vain. Further, respondent appealed to this court against decision of DLHT Tarime via Land Appeal with reference Number 20231127000026199 in which she lost with costs. Applicant filed taxation cause with reference number 00007555 of 2024 to taxing officer who delivered ruling on 31/07/2024 and it is the cause of this application. When the matter was fixed for hearing, applicant was represented by Mr. Paulo Mng'arwe while respondent was represented by Mr. Faustine Malongo both advocates. Mr. Mng'arwe was the first to address this court that from Ward tribunal to High court the liquidated sum of TZS 100,000,000,000/ was an issue which was uncontested. When granted costs, they filed taxation cause and peg in their bill of cost Item II at the tune of three billion Tanzanian Shillings which was part of the main claim as per 9th schedule of Advocate Remuneration Order, GN. 263 of 2015 (the Order) on consideration that the matter was contentious. However, he submitted that taxing officer Page 2 of 9 applied 11th schedule of the same Order and award TZS 1,000,000/. It was Mr. Mng'arwe assertion that taxation cause originates from ward tribunal in which there were contentious issues all the way contrary to what was found by the taxing officer that it originated from the appeal. He finds this is an illegality warranting his prayer for extension of time so that he may challenge that amount and find refuge in Nyagana Cosmas Ndalu and Another vs Maforo Ndaru,

PC Criminal Appeal No. 5 of 2020 when this court Kisanya, J cited VIP Engineering and Marketing Limited vs City Bank Tz limited, consolidated 6/7/and 8 of 2006 that illegality is sufficient reason for extension of time and rested his case. Counsel for respondent objected application on ground that applicant failed to state illegality on face of record as per affidavit supported the application. He attacks the affidavit that it has general allegation that ruling of the taxing officer is tainted with illegality without disclose illegality and what was submitted by Mr. Mng'arwe is submission from the bar which is not supposed to be considered. He cited Hassan Abdulhamid vs Erasto Eliphase, Civil Application No. 402 of 2019 in which the court insisted that alleged allegation must be clear but was not in the case at hand. Page 3 of 9 Mr. Malongo submitted further points submitted by counsel for applicant on illegality, does not qualify to be illegality because it will need this court to analyse in length if taxing officer make an error by reading and ascertain whether claims in bill of cost is liquidated or not, whether parties had consented to what was recorded or not and analyse 9th schedule and 11th schedule to prove if decision of the taxing officer is tainted with illegality in order to decide whether to grant extension of time or otherwise. According to him, that is supposed to be done by the taxing officer or by this court if there was reference filed. Generally, he was of the submission that the alleged illegality is not apparent on face of record to justify grant of time as was clarified by the court in Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011) that not every application of extension has to be granted, it must be on the face record without long drawn argument. He prayed this court not to grant what was prayed by the applicant. About the cited case of Nyagana Cosmas Ndalul and Another vs Maforo Ndaru (supra) he submitted that in that case the issue was on jurisdiction of the trial court that's why illegality was accepted. Page 4 of 9 On a different note, Mr. Malongo submitted that counsel failed to account 48 days of his delay since last date when the matter was struck out on 05/12/2024 to January 2025 when this application was filed. Citing Order 7(2) of the Order, he submitted that time to file application of this nature is 21 days and the counsel failed to account the days. To support his submission, he cited Wambele Mtumwa Shahame vs Mohamed Hamis Civil reference no 08 of 2016 at page 7, 9 and 10 CAT where the Court insisted importance of accounting each day and prayed the application to be found with less merit. He prayed that with costs. Before all that submission, Mr. Malongo submitted that this court was not properly moved as chamber summons was file under section 14 of the Law of Limitation Act, Cap 89 which is not applicable in this matter instead of order 8 (1) of the Orders. When had time for rejoinder, Mr. Mng'arwe clarified that section used to move this court is from Cap 89 which is of general application. However, on the current position he insisted, wrong citing of provision of law if not fatal what is important is existence of provision of law which allow that application. He went on clarifying that in the applicant affidavit he mentions contravention of the applicable law by the taxing officer. About Page 5 of 9 counting time, he insisted he did not count days of delay as his submission was based on illegality which is enough in granting time. He distinguishes the case of Hassan Abdulhamid vs Erasto Eliphase (supra) that at paragraph 7 of affidavit applicant mentioned contravention of applicable law. It is trite law that whenever any part seeks for extension of time to file an application or appeal out of time, he/she must advance the sufficient reason (s) that the court can consider it before granting the same. As the matter of fact, there is

no decisive definition of what a sufficient/good cause is, however, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer and circumstances of the case. See *Jaliya Felix Rutaihwa vs Kalokora Bweshwa & Another*, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam. The term reasonable or sufficient cause therefore is a relative one and is dependent upon party seeking enlargement of time to provide relevant materials in order to move the court to exercise its discretionary mandate Page 6 of 9 in his favor. However, the Court, in my opinion, has produced two (2) criteria on the subject to assist judges and magistrates in resolving disputes of this nature, namely: first, promptness of the applicant after becoming aware that he is out of time (see: *Dar es Salaam City Council vs Jayantilal P. Rajani*, Civil Application No. 27 of 1987 and second, accountability on every day of the delay (see: *Bushiri Hassan vs Latifa Lukio Mashayo*, Civil Application No. 3 of 2007). Further, inordinate delay or negligence on part of applicants for enlargement of is discouraged by our superior court (see: *Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania* (supra). It was resolved so to avoid applicants who file their application as and when they so wish. Delay can also be entertained when there is illegality which cannot be retain in the court record as was in *Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania* (supra). In *James Anthony Ifada vs Hamis Alawi*, Civil Appeal No. 482/2014 of 2019 the court stated that; Page 7 of 9 '.... where there is allege illegality to the decision, extension of time need to be granted so that all alleged illegality can be addressed in the Court of Appeal to that appeal... In the present application, the applicant has registered only one issue for extension of time, illegality. He complained that the bill of cost was supposed to be entertained under the 9th schedule and not 11th schedule as applied by the taxing officer. He insisted that the matter was for liquidated sum because from ward tribunal to the High Court parties were in contentious issues on liquidation and therefore the proper schedule was what was indicated in the bill. Before went on analysing this application let us see the origin of this application. It was Mr. Mng'arwe submission that applicant after the ward tribunal decision, Respondent appealed to DLHT and to the High Court but did not succeed. It was this court in Land Appeal with reference Number 20231127000026199 which granted cost to applicant as indicated in Taxation Cause Number 00007555 of 2024. It was in land appeal where applicant was awarded costs and it was an appeal from decision of District Land and Housing Tribunal. Taxing officer applied the 11th schedule which is, among others, applicable for proceedings in the High Court. I know that Page 8 of 9 this is not an appeal, but in looking for illegality I had to cite the provision of law. From my analysis, I find there is no illegality warranting extension of time under Advocate Remuneration Order because bill of cost filed by the applicant originated from the decision of this court on appeal. The application is found without merit and is hereby dismissed with costs. DATED at Musoma this 26th day of March, 2025. M. L. KOMBA Judge Page 9 of 9

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