

TANZANIA / JUDGMENT

MKAMA RULING

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28 March 2025

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA MISCELLANEOUS
CIVIL APPLICATION NO. 23170 OF 2024 DAUD

MKAMA.....APPLICANT VERSUS THE REGISTERED
TRUSTEES OF THAQAAFA EDUCATION FOUNDATION.....1ST RESPONDENT
MARUZUKU MAGONGO.....2ND RESPONDENT

RULING

26th & 28th March, 2025 KAMANA, J. This is an application for an extension of time to file a civil reference challenging the legality of the taxation order in the Application for Bill of Cost Taxation Case No. 8806 of 2024. The application went unopposed as Mr. Masoud Mwanaupanga, learned Counsel for the respondents, informed this court of that position. Mr. Godfrey Martin, learned Counsel for the applicant, was brief as he asked this court to consider the applicant's affidavit and grant the prayed order. I went through the affidavit in question and found that the impugned decision was delivered on 24th July, 2024. On 1st August, 2024, the applicant, through his advocate, wrote a letter requesting a 1 copy of the ruling but was told that there were clerical errors that needed correction. On 16th August, 2024, the applicant wrote another letter reminding to be supplied with a copy of the ruling. It was on 27 th August, 2024 when the applicant was furnished with a needed copy of the ruling. The supplied ruling found him out of time to file a civil reference to this court. Hence, he filed this application on 4th September, 2024. It is an established principle that this court is clothed with the discretionary powers to judiciously extend the time to file a matter. This position has been enunciated in multitudinous decisions. See: Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010; Metro Petroleum Tanzania Limited and 3 Others v. United Bank of Africa, Civil Appeal No. 147 of 2019; and EPDB Construction Company Limited and 2 Others v. CRDB Bank PLC, Civil Reference No. 3 of 2016. For such powers to be exercised in favour of the applicant, he is required to advance "good cause" as to his delay in taking the action within the time. There is no clear-cut definition of what constitutes "good cause". In that case, the determination of what amounts to "good cause" is the prerogative of the court after taking into consideration 2 various factors. These factors include the reasons for the delay, length of delay, diligence of the applicant and so on. The Court of Appeal had this to say when determining whether the applicant furnished good cause to warrant an extension of time in 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: 'As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated: -

- (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) If the court feels that there are other sufficient reasons, such as the existence of a point of law of 3 sufficient importance; such as the illegality of the decision sought to be challenged.' From the affidavit, I am convinced that the applicant was diligent in pursuing the matter. This is evidenced by the two letters he wrote requesting a copy of the ruling. Further, there was no inordinate delay as within almost ten days after receiving the ruling, the applicant filed this application seeking an extension of time. Given that, the application is granted. The applicant should file his civil reference on or before 11th April, 2025. It is so ordered. DATED at MWANZA this 28th of March, 2025. KS KAMANA JUDGE 4

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