

TANZANIA / JUDGMENT

EMMANUEL JOHN

COURT
TANZLIIDECIDED
19 June 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA MISC. CIVIL APPLICATION NO. 6955 OF 2024 (Arising from Taxation
Cause No. 33 of 2023 which originated from Civil Appeal No. 01 of 2023) EMMANUEL
JOHN.....APPLICANT VERSUS LAURENT
GOMBANILA.....RESPONDENT

RULING

19th June & 19th June, 2024. Kilekamajenga, J. The applicant had a case with the respondent which ended in favour of the respondent. The respondent claimed for bill of costs before the taxing officer and the applicant was ordered to pay Tshs. 2,870,000/= instead of the claimed amount of Tshs. 4,470,000/=. The decision on the bill of cost was delivered on 20 th November 2023. Thereafter, the applicant did not take any steps to challenge the bill of costs until he was awakened by the respondent's steps to realize the taxed bill. On 31st March 2024, the applicant filed the instant application seeking extension of time to challenge the taxed bill. The application is made under Order VIII, Rule 1 and 2 of the Advocates Remuneration Order of 2015 and section 95 of the Civil Procedure Code, Cap. 33 RE 2019. The application is accompanied by an affidavit of the applicant. 1 In the affidavit, the applicant stated that, the Taxation Cause No. 33 of 2023 was disposed of by way of written submission. After filing all the necessary submissions, the date of ruling was not fixed. The applicant followed up for the ruling but without success. He remained uninformed about the case until on 20th January 2024 when he was summoned before the Village Chairman to receive the ruling which though lacked the official stamp of this court. After another follow- up, the applicant received a copy of the proceedings and ruling on 29th January

2024. In the process of mobilizing resources to challenge the bill, the applicant was involved in a bicycle accident which dislocated his shoulder. He attended treatment to a local healer from 31st January up to 5th March 2024. Therefore, he was delayed for 119 days. Apart from following up the copy of proceedings and ruling, he used the rest of the days for treatment of his shoulder and mobilizing funds to secure a lawyer. When the application came for hearing, the unrepresented applicant reiterated his discomfort with the failure to be informed about the date of the ruling. He urged the court to grant him an extension of time to file a reference to challenge the ruling of the taxing master. This is an application that seeks the power of the court to exercise its discretion. Extension of time may be granted

where the applicant advances sufficient cause for the delay. See, the cases of Sospter Lulenga v. Republic, Criminal Appeal 2 No. 107 of 2006, Court of Appeal of Tanzania at Dodoma (unreported); Aidan Chale v. Republic, Criminal Appeal No. 130 of 2003, Court of Appeal of Tanzania at Mbeya (unreported) and Shanti v. Hindochi and Others [1973] EA 207. In the case of Tanga Cement Co. v. Jummanne Masangwa and Another, Civil Appeal No. 6 of 2001 (unreported) the Court of Appeal stated that: "This unfettered discretion of the court, however, has to be exercised judicially, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly: the absence of any valid explanation for the delay: lack of diligence on the part of the applicant." In this application, the applicant has alleged several reasons for the extension of time. He alleged that the date of the ruling was not unveiled to him. He further alleged that he was involved in an accident and sought treatment from a traditional healer. Unfortunately, all the alleged facts are not supported with evidence. Even the allegation that he followed-up for the copy of the ruling and proceedings is not founded because there is no even a single letter to request the same documents. As stated in the affidavit, the applicant delayed for more than a hundred days which are not accounted for. 3 The case of Lyamuya Construction Company Limited v. Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT at Arusha provides for guidance for the court to extend time thus:

- (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 sufficient importance; such as the illegality of the decision sought to be challenged. When measured in the above standards, the instant application fails to meet the criteria for extension of time. Precisely, the applicant lacks sufficient cause for the delay. The applicant has not accounted for each day of delay, the delay of more than a hundred days is inordinate; there is no illegality or any point of law to compel extension of time in this application. I hereby dismiss the application. No order as to costs. DATED at Mwanza this 19th Day of June 2024. 4 Ntemi N. Kilekamajenga. JUDGE 19/06/2024 Court: Ruling delivered this 19th Day of June 2024 in the presence of the applicant but in the absence of the respondent. Right of appeal explained to the parties. Ntemi N. Kilekamajenga. JUDGE 19/06/2024 5

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