

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 337 OF 2017
(From Original Commercial Case No. 14 of 2016)

BETWEEN

SAMUEL JOEL MAKUNDI ----- APPLICANT

VERSUS

DR. WILBERFORCE EMANUEL MEENA----- 1ST RESPONDENT

BABUEL EMMANUEL MEENA -----2ND RESPONDENT

RULING

SONGORO, J

On the 25th October, 2017 , Samuel Joel Makundi the applicant relying under Section 14(1) of Law of Limitation Cap 89 filed an application for an order for extension of time to file bill of costs out of time. The applicant application was supported by an affidavit sworn by Samuel Joel Makundi the applicant. The Respondents were Dr. Wilberforce Emmanuel Meena and Babuel Emmanuel Meena who also filed counter affidavit and opposed the application.

In the light of the application the court on 18/4/2018 invited both parties to pursue the application. So Ms. Angella Mushi Learned Advocate appeared for applicant, whereas Mr. Benson Kuboja Learned Advocate appeared for the Respondent.

To start with Ms. Angela Mushi told the court that, previously they filed an application of bill of costs but was dismissed by the Taxing Master on 19/10/2018

for reason that, it was filed contrary to Rule 4 of the Advocates Remuneration orders. After that, the application was dismissed by the Taxing Master and they file the instant application for extension of time.

On the reason in support of the application, the applicant counsel argued that, they delayed to file the application was caused by failure to secure a copy of judgment and decree from the court, and the applicant was in Moshi.

So due the fact that, they delayed to secure copies judgment and decree and applicant is residing at Moshi, their delay to file application was not caused by negligence. So he pray that, the application be granted.

On his part, Mr. Kuboja for the Respondent, argued that, the court may not grant an extension of time because the application for bill of cost was dismissed. So it was mandatory for the applicant to file first an application to set aside dismissal order and then application for extension of time. On the reason that, the applicant failed to file application within statutory requisite time of 60 days, the respondent counsel argued that, there is no law which set a statutory condition that, the application has to be accompanied with a judgment and decree. So the applicant reason that, the delay was caused by failure to be supplied with copies of judgment and decree is not legally maintainable, and that, may not be good reason for extension of time.

The counsel also argued that, the applicant was in Moshi, that, point has no basis. So the respondent counsel pray that, the application for extension of time should not be granted because no sufficient cause has been advanced.

The court has considered argument from both sides and find under Section 14(1) of the Law of limitation Act Cap 89, the court has discretionary powers to

grant or refuse an application for extension of time. But that, discretion must be exercised judiciously.

Now turning to the merit of the application, the court find the applicant did not annex a copy of the Ruling of Taxing Master which dismissed the application. But when the court casted the net, on the court record it find that, when the application for bill of cost was before Hon Rwezile DRCC on 19/10/2018 it was marked to have been withdrawn for reason that, the applicant consent that, his application was time barred.

So the argument that, the application for bill of costs which was “dismissed” argued by both parties is not supported by the court record of 19/10/2017. In reality, the application was marked to have been withdrawn. It is my view that, such an application which was withdrawn ended on that, day.

Now turning to the reasons for the delay, the court find were mainly two. First, the applicant was delay to be served with copies of judgment and decree. I have consider the point and find that, possession of judgment, decree and court proceedings are necessary documents for the preparation, and filing of bill of costs. So if there was delay in securing copies of the said documents, that, is sufficient reason for the delay in filing application, and may be the basis of extension of time. Mr. Kuboja has tried to convince the court that, copies of judgment and decree were granted to the applicant within 60 days, and if applicant was diligent, he would have file the same on time. I have consider this point but I was not shown any proof which shows applicant who is said was in Moshi was served with the said documents within 60 days.

For reason explain above plus fact that, there is no proof that, applicant was served with all documents within 60 days, I find the applicant has advanced

sufficient reasons under which the court may exercise its discretion. The court finds the possession of copies of judgment decree and proceedings were necessary documents for filing an application for bill of costs.

In the end result, I hereby pursuant to Section 14(1) of the Law of Limitation Act Cap 88 hereby exercise the court direction and grant the applicant time to file a bill of costs within 30 days from today. Each party to bear his own costs.

Dated and Delivered at Dar es Salaam on this 18th day of April 2018



H.T. SONGORO
(JUDGE)

The Ruling has been delivered in the presence of Ms Angela Mushi, Learned Advocate of the applicant and Mr. Benson Kuboja Learned Advocate of Respondent.