

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISC.COMMERCIAL APPLICATION NO 135 OF 2023**

**MOBIKEY TRUCK AND BUS LIMITED..... APPLICANT**

**VERSUS**

**JUNIOR CONSTRUCTION COMPANY LIMITED.....RESPONDENT**

**RULING**

*Date of Last Order: 19.09.2023  
Date of Judgement: 10.11.2023*

**AGATHO, J.:**

In this application, the applicant is in pursuit of extension of time within which to file Bill Costs out of time which emanated from the Judgment with respect to Commercial Case No. 47/2022. The application is brought by way of chamber summons made under, section 14(1) of the of the Law of Limitation Act [Cap 89 R.E. 2019], and section 93 of the Civil Procedure Code [ CAP 33 R.E. 2019], praying for the following orders:

1. That this honourable court may be pleased to grant the applicant for extension time to file bill of costs out of time which emanated from judgement in respect to commercial case No 47/2022 by Hon. Agatho, J dated 16.6.2023.
2. Costs to follow the event.

3. Any other relief (s) as the Honourable court shall deem fit and just to grant.

The chamber summons was taken at the instance of Mr. Ndanu Emmanuel, learned advocate for the applicant and is supported by an affidavit deposed by Mr. Ndanu Emmanuel, learned advocate for the applicant, stating the reasons why this application should be granted. Upon being served with the application, the respondent filed a counter affidavit deposed by Mr. Juventus Katikiro, learned advocate for the respondent stating the reasons why this application should not be granted.

The material facts to this application are imperative, albeit in brief, to be stated. The facts as gathered in application proceedings show that, this application traces its origin from judgement of this Court, Commercial Case No. 47 of 2022 whereby the applicant's case against the respondent was decided on 14/12/2022 in favour of the applicant, among others, with costs. However, the applicant was out of statutory time to file the bill of costs. Hence, this application for extension of time to file the application for bill of costs.

Before venturing unto the application, it suffices to mention that the applicant was represented by Ndanu Emmanuel Stephen learned advocate while the respondent enjoyed the services of Juventus Katikiro, learned advocate. It was by consensus that the application disposed by way of

written submissions. The schedule was drawn, and appreciatively the parties filed their submissions timely.

Submitting in support of the application, Mr. Ndanu prayed to adopt the contents of his affidavit as part of his submissions and averred that the applicant was successful in Commercial Case No. 47/2022 which was in breach of contract. He further submitted among others, the applicant was awarded costs and she ought to have filed for a Bill of costs within sixty (60) days from the date of awarding the said costs. Unfortunately, he failed to file the Bill of Costs within statutory time limit due to a communication mishap and a change of personnel in the applicant's administrative office who was to be responsible for the case follow-ups. Mr. Ndanu is aware that for one to be granted an extension of time by the court, he/she ought to have established a good cause for the delay. He added that good cause has not been defined anywhere but it is for the court to decide each case depending on its circumstances. He cited the case of **Kalunga and Company Advocates v. National Bank of Commerce [2006] TLR 235** and **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd, Civil Application No. 13/2010** CAT in support of his averments.

Further reliance was placed in the case of ***Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2***

*of 2010 CAT* which stipulated the factors to considered in determining whether the applicant has accounted for delay. He stated that the judgment and decree that awarded the applicant costs was delivered on 16/06/2023 but the same was communicated to the applicant by his then advocate on 14/07/2023 via the email of the Finance and Administration Manager and the Managing Director was also copied. Unfortunately, these two were out of the office hence the email remained unattended until 23/08/2023 when the manager was informed through a phone call. The learned counsel for applicant contended that, upon further communications with the new manager prompt authorization was done with the counsel to file this application which was prepared and filed online and later the same was filed physically on 31/08/2023.

According to the learned advocate for applicant, the applicant delayed for fourteen (14) days from 15/08/2023 to 31/08/2023 therefore the delay is not inordinate and the same is accounted for since the 14 days of delay were used in preparation and filing of this application. Mr. Ndanu argued that the applicant was not negligent but the delay was due to the changes of management personnel in the applicant's office as clearly evidenced in the documentary evidence attached in the affidavit. It is on the totality of the above reasons that the learned counsel for the applicant invited this court to grant the prayers as contained in the

chamber summons so as to pave way for the interest of justice to be done.

In rebuttal, Mr. Juventus Katikiro learned advocate for the respondent strongly opposed the application and prayed that the contents of the counter affidavit sworn by himself be adopted as part of his submissions. He then averred that the applicant has not demonstrated sufficient reasons nor advance a good cause for this court to act in her favour. He further stated that the cardinal principle of law in any application for extension of time is for the court to determine whether a good cause for delay has been established, and whether the applicant has managed to account for each day of delay. The learned advocate averred that the applicant's failure to file his Bill of cost on time was due to his reluctance in attending to the emails shared to her on 14/07/2023. He insisted that, it is well known and practiced that the company being a legal entity whose management and operation are through its officers who work and perform on daily basis. Therefore, when there is change in officers, there must be handing over of duties and assignments between the previous and current officer to act in favour of the applicant.

Mr. Katikiro further argued that despite the fact that the applicant was informed of the judgment and decree on 14/07/2023, she chose to remain silent until 23/08/2023 when she filed this instant application. This,

according to Mr. Katikiro shows how reluctant the applicant was. He contended that the applicant has failed to account for each day of delay and that she was negligent as the delay was caused by her own fault and not otherwise. He referred the court to the case of **Elfazi Nyatega and 3 Others v. Caspian Mining Ltd Civil Application No. 44/08 of 2017** CAT where it was held that in an application for extension of time, the applicant has to account for every day of delay. On the basis of what has been stated herein, the learned counsel submitted that, the applicant failed to disclose sufficient reasons to warrant the granting of the prayers sought. He therefore prayed for dismissal of this application with costs.

On a brief rejoinder, Mr. Ndanu had nothing useful to say. He reiterated his submissions in chief.

Having heard and followed the rivalling arguments for and against the grant of this application, in my respective opinion, the issue for determination is whether the applicant has demonstrated sufficient cause warranting this Court to grant the application. It should be noted that the applicant seeking for extension of time having failed to act or do a certain legal act, must disclose sufficient reasons regarding why he was unable to do that act within the prescribed time. It should further be noted that what constitutes a sufficient cause cannot be laid by any hard and fast rules but depends upon the facts in each case. However, the relevant

factors must be considered. And these includes, length of the delay, the reasons for the delay, whether there is an arguable case on appeal and if will it cause prejudice to the defendant or respondent in case time is extended. See the case of **VODACOM FOUNDATION V. COMMISSIONER GENERAL OF TRA CIVIL APPEAL No. 107 /20 OF 2017 CAT** (Unreported).

Now back to the instant application the issue for determination as already stated is whether the applicant has demonstrated sufficient cause to warrant this court to extend time within which the applicant will be able to file the bill of costs? The applicant in her affidavit in support of the application and the submission in chief mentioned that the main cause of delay to file their bill of costs was due to a communication mishap and a change of personnel in the applicant's administrative office who was to be responsible for the case follow-ups. I find that the reasons raised by the applicant to insufficient to account for the delay as correctly submitted by Mr. Katikiro, for the respondent's advocate. I further join hands with him to the effect that the applicant being a legal entity she operates under a management and officers. Therefore, in case of any change of officers or the management itself, there must be a hand over from the outgoing to the incoming officer or manager. In addition to that, there was no explanation as to what the applicant was doing in 14 days after she

received the judgement on 16.6.2023. The argument that 14 days was used for preparation and filling of the instant application is devoid of merits and hereby rejected because what the applicant is seeking in this court is just sympathy. On that note, the reasons adduced by applicant do not suffice to establish a good cause of delay. And this court being no one's mother, it cannot act on the negligence, apathy, and sloppiness of either party to grant extension of time. Such unfounded reasons ought to be rejected.

In the circumstances I find that this application has been brought without any sufficient cause and I accordingly dismiss it with costs.

It is so ordered.

**DATED at DAR ES SALAAM this 10<sup>th</sup> Day of November 2023.**



  
**U. J. AGATHO**

**JUDGE**

**10/11/2023**



**Date:** 10/11/2023

**Coram:** Hon. U. J. Agatho J.

**For Applicant:** Juventus Katikiro, advocate h/b of Ndanu Emmanuel, Advocate

**For Respondent:** Juventus Katikiro, Advocate

**C/Clerk:** Beatrice

**Court:** Ruling delivered today, this 10<sup>th</sup> November 2023 in the presence of Juventus Katikiro, advocate for the respondent also holding brief of Ndanu Emmanuel counsel for the Applicant.



  
**U. J. AGATHO**

**JUDGE**

**10/11/2023**