



**IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
FIRST INSTANCE DIVISION**



(Coram: Isaac Lenaola, DPJ; Faustin Ntezilyayo, J & Fakihi A. Jundu, J)

APPLICATION No.9 of 2015

(Arising from Taxation Reference No. 1 of 2015)

GODFREY MAGEZI..... APPLICANT

VERSUS

NATIONAL MEDICAL STORES..... RESPONDENT

30TH JUNE 2016

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RULING OF THE COURT

A. INTRODUCTION

1. This Application, by Notice of Motion, was filed by Mr. Godfrey Magezi (hereinafter referred to as the “**Applicant**”), a resident of the Republic of Uganda. His address for service, for the purpose of this Application is C/O Nyanzi, Kiboneka & Mbabazi Advocates, Plot 103 Buganda Road, P.O. Box 7699 Kampala.
2. The Respondent is National Medical Stores, a corporation established in 1993 by an Act of Parliament, under Chapter 207 of the Laws of Uganda. Its address for service, for the purpose of this Application is C/O Kiwanuka & Karugire Advocates, Plot 5A2 Acacia Avenue, Kololo, P.O. BOX 6-61, Kampala.
3. The Application was filed following a Ruling against the Applicant rendered on 7th September 2015, in respect of taxation of Bills of Costs by National Medical Stores and Quality Chemical Industries Ltd vide **Consolidated Taxation Causes Nos. 2 and 4 of 2014: National Medical Stores & Quality Chemicals Industries Ltd v Godfrey Magezi.**
4. The Applicant moved this Court under Rules 4, 84(1) and (2), 85(1) and 11 of the East African Court of Justice Rules of Procedures, 2013 (hereinafter referred to as the “**Rules**”) for orders as follows:

“(a) Enlargement of time for lodging Taxation Reference No.1 of 2015: Godfrey Magezi v National Medical Stores against the decision of the learned Deputy Registrar in Consolidated Taxation Causes Nos. 2 and 4 of 2014: National Chemical Stores & Quality Chemical Industries Ltd v Godfrey Magezi be granted;

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(b) Validation of the late filing of Taxation Reference No.1. of 2015: Godfrey Magezi v National Medical Stores;

(c) Costs of this application be in the cause.”

5. The Applicant was represented by Mr. Mohamed Mbabazi and Ms. Patricia Nyangoma, while Mr. Peter Kauma appeared for the Respondent.

B. APPLICANT’S CASE

6. The Application is supported by the Applicant’s affidavit and an affidavit of his Counsel, Mr. Mohamed Mbabazi, both sworn on 2nd October 2015. The Applicant also filed written submissions and submissions in rejoinder, on 21st March 2015 and 16th November 2015, respectively.

7. The grounds of the Application are that:

“1) The failure and/or omission to file a taxation reference within the prescribed time frame was not the applicant’s doing but of his counsel;

2) The applicant filed Taxation Reference No. 1 of 2015: Godfrey Magezi v National Medical Stores in this Honourable Court on 22nd September, 2015, a day late;

3) The applicant took immediate steps to cure the default in filing the said taxation reference in time.

4) Justice requires that this application be granted.”

8. In his submissions based on his affidavit and that of his Counsel’s, the Applicant first of all averred that after getting a copy of a ruling against him in **Consolidated Taxation Causes Nos. 2 & 4 of 2014** (supra), dissatisfied with it and having discussed with his Counsel on

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possible legal remedies against the Ruling, he instructed him to challenge the award in Taxation Cause No. 2 of 2014. They also agreed that, as per the Court Rules, the taxation reference had to be filed by Monday, 21st September 2015.

9. The Applicant further stated that, on 17th September 2015, he reminded his Counsel to file the taxation reference and asked him to file it by Friday, 18th September 2015, but that Mr. Mohamed Mbabazi told him that he was going upcountry to his farm on Friday, 18th September 2015, and would be back on Monday, 21st September 2015 in time to file the reference.

10. In addition, the Applicant submitted that, when he called Mr. Mohamed Mbabazi, on 21st September 2015, he informed him that, as deponed in Mr. Mbabazi's affidavit, he had suffered personal problems whereby one of his workers had drowned in a pool on his farm in Hoima District, on 20th September 2015, which required his presence and cooperation with the Uganda Police.

11. The Applicant then averred that his Counsel had returned to his chambers in the evening of 21st September 2015 to prepare and sign the Notice of Motion for the intended reference, and that it was only on Tuesday, 22nd September 2015 that he managed to sign his affidavit in support of the intended taxation reference, which was then filed the same day.

12. In addressing the issue raised in Mr. Appollo Newton Mwesigye's Affidavit in reply that no sufficient reason was given in the application for the late filing of the taxation reference, the Applicant's Counsel referred to the case of **St. Kizito Youth Farm Ltd v. AG - Civil Application No. 58 of 1997** where Justice C.M. Kato, as he then was, stated "***that sufficient reason is not defined anywhere***" and to the cases of **Mugo v. Wanjiri [1970] EA 481 at pg 483, Njaiji v. Munyiri**

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[1975] EA 179 at page 180; Rosette Kizito v. Administrator General & Others (Supreme Court Civil Application No. 9/86)

where it was held that sufficient reason must relate to the inability or failure to take the particular step in time.

13. Basing on the abovementioned authorities, Learned Counsel then submitted that **“in the instant application, the failure by Counsel for the Applicant to file the reference within the prescribed time under Rule 11[sic] of the Rules of this Court was shown in paragraph 7,8,12 and 13 of the affidavit of Mohamed Mbabazi.”**

She further stated that, as deponed by Mohamed Mbabazi, upon filing the taxation reference in the Kampala Registry of this Court, he was informed by the Registry clerks that it was one day late. Counsel then stated that the Applicant was subsequently informed of the lapse in the filing of Taxation Reference No.1 of 2015 and advised to file this instant Application with immediate effect and the latter was filed on 2nd October 2015.

14. Counsel thus submitted that **“this application was filed as soon as the default in filing the taxation reference in time was discovered and hence there is no inordinate delay in filing this application”**. She ended her submissions by praying that this Court should extend time for filing Taxation Reference No. 1 of 2015 and subsequently legally validates the reference already filed in this Court.

15. Furthermore, in her submissions in rejoinder, the Applicant’s Counsel pressed upon this Court to grant the prayer to extend the time to file the taxation reference relying on the case of **Julius Rwabinumi v. Hope Bahimbisomwe : Civil Application No. 14 of 2009** where the Court held that : **“it would be a grave injustice to deny any applicant to pursue his rights of appeal simply because**

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of a blunder of his lawyer when it is well settled that an error of counsel should not necessarily be visited upon his client.”

For the above reason, the Applicant prays that his Application should be granted as prayed.

C. RESPONDENT'S CASE

16. The Respondent strongly opposed this Application on various grounds contained in the affidavit in reply sworn on 16th November 2015 by Mr. Apollo Newton Mwesigwe, Corporate Secretary of the Respondent and in its written submission filed on 1st April 2016.

17. The Respondent's Counsel stated that, as deponed by Mr. Apollo Newton Mwesigwe, the main reasons for opposing the Application were that no sufficient reason has been given in the Application and the supporting affidavits for the late filing of the taxation reference since no specific details of the incident that is alleged to have caused the delay in filing were given.

18. In the aforesaid affidavit, it was also deponed that in the absence of any evidence in proof of the incident that is alleged to have caused the delay in filing the reference, there cannot be said to be sufficient reason to grant the orders sought and the Application accordingly is without basis and must fail.

19. Mr. Mwesigye further stated that he was aware that the law firm of M/S Nyanzi, Kiboneka and Mbabazi Advocates which is handling the case has more than ten lawyers but no explanation has been given why none of them completed the filing of the Application within time in the alleged absence of Mr. Mohamed Mbabazi. In that regard, he further stated that the Applicant has also not given any explanation as to why he did not follow up on the matter with the other lawyers in the law firm in the alleged absence of Mr. Mohamed Mbabazi.

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20. Another argument given by the deponent in opposing the Application is that **Taxation Reference No. 1 of 2015** in itself does not have chances of success as the Bill of Costs being disputed was taxed in accordance with the law and the principles of taxation.

21. In light of all the aforementioned grounds, the Respondent's Counsel contented that the Applicant has not shown sufficient reason as envisaged under Rule 4 of the Court Rules for extension of time.

22. To buttress his argument that sufficient reason ought to be shown before an order for extension of time is granted, Learned Counsel relied on the Ruling in **The Secretary General of the East African Community V. Hon. Sitenda Sebalu, Application No. 9 of 2012 (Arising from Reference No. 1 of 2010)** which itself had quoted from the case of the **Attorney General of Kenya V. Prof. Peter Anyang' Nyongo, Appeal No. 1 of 2009**, where the Court stated as follows: *"This Court has discretion according to Rule 4 to extend time within which to file an appeal if sufficient reason is shown by the applicant. The Appellate Division made this crystal clear in Appeal No. 1 of 2009, The Attorney General of Kenya vs Professor Anyang' Nyongo & 10 Others, when the Court was dealing with an appeal from the Ruling of a single judge of this Division in Application No. 4 of 2009, between the same parties.*

The Court made the following solid observations at page 9 of the judgment: "... we wish to emphasize that the trial judge in this particular case was dealing with Rule 4 of the EACJ Rules, which requires a qualitatively higher standard to extend time (namely, sufficient reason), than the case with the standard of "any reason", which is prescribed under the corresponding rules in some member states (notably Kenya). Accordingly, the trial judge in exercising his discretion to

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extend time in this case, had to and did indeed; raised the bar appropriately to meet the rigorous standards of the Community Rules.”

Any doubt concerning the above approach was buried by H.R. Nsekela, President of the EACJ, in EACJ Application No. 2 of 2010. Prof. Anyang' Nyongo & 10 Others vs The Attorney General of Kenya and EACJ Application No. 2 of 2010, The Attorney General of Kenya vs Prof. Anyang' Nyongo & 10 (consolidated), when he stated as follows:

“The Court appreciates the reference to the Court’s “unfettered discretion” indicated in the Katatumba case above. Nonetheless, as a matter of practical application and good jurisprudence, the Court’s “unfettered discretion” arises only after ‘sufficient reason’ for extension of time, has been established. Therefore, to that extent, the Court’s discretion in an application to extend time is not unlimited...”

23. Stressing that in the aforementioned authorities the Court made reference to a **“qualitatively higher standard”** that is required under Rule 4 of the Court Rules, Learned Counsel submitted that that **‘qualitatively higher standard’** had not been achieved by the Applicant as to warrant an order for extension of time.

24. It was thus Counsel’s further submission that the affidavit of Mr. Mohamed Mbabazi in support of the Application was deficient in material details and that sufficient information has not been given to assist the Court arrive at a just decision.

25. He also recalled that **“the affidavit in reply sworn by Mr. Apollo Newton Mwesigye states that the applicant in the**



application and the supporting affidavits has not bothered to give the specific details of the incident that is alleged to have caused the delay in filing and the application is not supported by any evidence whatsoever in proof of the incident that is alleged to have caused the delay in filing the reference.”

26. Counsel thus submitted that the Application and supporting affidavits were deficient in as far as no police report was given to confirm the veracity of the alleged drowning incident. He hastened to add that a police report would have informed this Court about the full details of the incident and about the full extent of Mr. Mohamed Mbabazi’s involvement in the matter.

27. He went on to state that the Application did not even name the person who was alleged to have drowned and that the police’s confirmation of the incident was absent. He opined that that would have been vital in helping the Court determine the veracity of the reason as given by the Applicant.

28. It was Counsel’s further contention that in light of all his arguments above and considering that it is the duty of the Applicant to place sufficient material before the Court to enable it exercise its discretion, the Applicant had failed in his duty as no material at all had been placed before the Court.

29. In support of this contention, Counsel cited the case of **The Secretary General of the East African Community V. Hon. Sitenda Sebalu, Application No. 9 of 2012 (Arising from Reference No. 1 of 2010)**, where the Court stated thus: ***“The courts have also emphasized that the discretion under Rule 4, just like any other discretion, must be exercised***

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judicially and not arbitrarily or capriciously, nor should it be exercised based on sentiment or sympathy. That the burden lies squarely on the party seeking the Court's discretion to place before the Court the material upon which the discretion is to be exercised. Sufficient reason depends on the circumstances of each case.

30. In the same vein, Counsel, relying on Section 101(1) of Uganda's Evidence Act, Cap. 6 stated that if a party wishes the Court to give judgment based on the existence of facts, that party must prove that those facts exist. In addition, citing Section 103 of Uganda's Evidence Act, Cap.6, Counsel submitted that the Applicant had not discharged the burden of proof that is required of him to prove sufficient reason for extension of time as prayed.

31. With regard to other considerations for grant of an application for extension of time, Learned Counsel referred this Court to the case of **Hon. Sitenda Sebalu, Application No. 9 of 2012** (supra), where the Court reiterated that its discretion to extend time under Rule 4 comes into existence after sufficient reason for extending time has been established and that it is only then that the other considerations such as the length of delay, the reason for delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, can be considered. It was, therefore, Counsel's contention that those other considerations for extension of time had not been met by the Applicant. Counsel further highlighted that the consideration that the Reference has chances of succeeding if this Application is granted was absent. On that point, Counsel echoed Mr. Apollo



Newton Mweisigye's position in his pre-cited affidavit where he stated **"that the Taxation Reference No. 1 of 2015 for which extension of time is sought does not in itself have chances of success as the bill of costs being disputed was taxed in accordance with the law and principles of taxation."** Counsel then deduced from the foregoing that **"it would be futile for the Court to grant the extension where the Taxation Reference has absolutely no chances of succeeding."** In that regard, relying again on Hon. Sitenda Sebalu, Application No. 9 of 2012 (supra), Counsel stressed the point that nowhere had the Application stated that the taxation reference had a chance of succeeding.

32. Accordingly, the Respondent prayed that the Court's discretion be exercised in its favour and that the Application be dismissed with costs.

D. COURT'S DETERMINATION

33. From the pleadings and the submissions on record, it can be gleaned that the issue to be determined by this Court is whether there is sufficient reason in the Application to grant the extension of time for filing Taxation Reference No. 1 of 2015.

34. Granting extension of time is governed by Rule 4 of the Court Rules. It states that ***"A Division of the Court may, for sufficient reason, extend the time limited by these Rules or by any decision of itself for the doing of any act authorised or required by these Rules, whether before or after the expiration of such time and whether before or after the doing of the act, and any reference in the Rules to any such time shall be construed as reference to such time as so extended"***.



Rule 114 relating to reference on taxation provides that ***“Any person who is dissatisfied with a decision of the taxing officer may within fourteen (14) days apply by way of reference on taxation for any matter to be referred to a bench of three (3) Judges whose decision shall be final.”***

35. As the case stands, the thrust of the Applicant’s arguments is that the failure to file the taxation reference within the prescribed time under Rule 4 ***“was owing to the inadvertent omission by his counsel, Mr. Mohamed Mbabazi.”*** The fact leading to the failure to meet the deadline of 21st September 2015 was stated earlier in the Applicant’s case as the drowning incident of the Applicant’s Counsel’s worker, which incident allegedly required Counsel’s involvement and cooperation with the Uganda Police. The Applicant has thus pressed upon the Court to grant this Application for extension of time, ***“in the interests of administration of justice,”*** contending that no fault, dilatory conduct or omission could be ascribed to him for the delay in filing the said taxation reference in time.

36. The Respondent, however, strongly opposed the Application for the main reason that it does not meet the threshold set by Rule 4 as regards the Court’s determination on whether sufficient reason was given warranting the extension of time.

37. We have carefully considered the opposing arguments before us. We note that this Court has had occasion to interpret Rule 4 of the Court Rules in several applications, notably in **Hon. Sitenda Sebalu, Application No. 9 of 2012** and **Professor Anyang’ Nyongo & 10 Others, Appeal No. 1 of 2009** (supra). It is thus settled law that this Court has discretion according to Rule 4 to extend time within which to file an appeal



if sufficient reason is shown by the Applicant. Furthermore, as reproduced in paragraph 22 of this Judgment, the Court clearly stated that a **'qualitatively higher standard'** (i.e. sufficient reason) is required in examining a request for extension of time. The Court also did clarify that **"its discretion to extend time under Rule 4 only comes into existence after sufficient reason for extending time has been established and that it is only then that the other considerations such as the absence of any prejudice and prospects or otherwise of the success in a reference or appeal can be considered."** (See Hon. Sitenda Sebalu, Application No. 9 of 2012 (supra), p. 10).

38. In light of the aforementioned case law, we now revert to the question stemming from the issue at hand: ***Does the reason given in the Application meet the standard set by this Court's jurisprudence in interpreting Rule 4 of the Court Rules to warrant an order for extension of time?***

39. As indicated earlier, the drowning incident of the Applicant's Counsel's worker was given as the reason for the late filing of the taxation reference. Learned Counsel, in his affidavit, also pointed out that, given the said incident, he had to collaborate with the Uganda police who recovered the worker's body on 21st September 2015. Apart from this simple statement, Counsel did not provide any other information on the circumstances of the incident or any evidence in support of his statement.

40. Considering the issue at hand and that the police had descended on the scene of the incident, one would have expected that the Applicant's Counsel would have annexed to his affidavit, some evidential proof of the incident that is said to



have caused the delay in filing the reference. This issue was raised by Mr. Apollo Newton Mwesigye at paragraphs 5, 6 and 7 of his affidavit in reply. Mr. Mohamed Mbabazi, the Applicant's Counsel was thus at liberty to file an affidavit in rejoinder and provide some evidence in proof of the incident, such as a police report which would have confirmed the veracity of the said drowning incident and provided further information on the incident and the extent of his involvement in the matter, as contended by the Respondent in his submissions. No such details on the drowning incident were given even after the Respondent raised the need for such details, correctly so.

41. It is our view that, if the Applicant's Counsel had provided some evidence in support of his statement on his failure to meet the deadline for filing the taxation reference, it would have enabled the Court to appreciate whether such a reason meets the requirement set by Rule 4 of the Court Rules. By making a statement in an affidavit without any evidence to substantiate it, then such a statement does not meet the rigorous standard of proof set by Rule 4 of the Court Rules as it has been interpreted in the aforementioned Court's decisions.

42. Having so stated, we now turn to the Applicant's contention that, after all, he was not to blame for the delay in filing the taxation reference since the failure was imputable to the **"inadvertent omission"** by his Counsel. Given the chronology of events preceding the late filing of the taxation reference, it is worth interrogating available facts in order to assess whether the conduct of the Applicant is irreproachable. First, on 17th September 2015, when pressing his lawyer to file the reference by Friday, 18th September 2015, the Applicant was told that the



former was going to his farm upcountry and that he would file the reference on 21st September 2015. This should have already raised some concern given that the date indicated by his Counsel was the last day to file the reference. As a precaution, he should have thought about a possible alternative measure to be taken. Considering an alternative solution was even more of an imperative when, on 21st September 2015, he learned from his lawyer that the latter would not file the reference within the prescribed time frame due to the aforementioned alleged drowning incident of his worker. In this respect, one wonders why the Applicant did not instruct his lawyer to have the filing of the reference taken up by one of the lawyers in his law firm which, as the Respondent has pointed out, and this was not denied, comprised more than ten lawyers. Neither the Applicant's Counsel nor the Applicant himself did address this question. The Applicant only stated that the failure to file on time was imputable to his Counsel, and relying on the case of **Julius Rwabinumi v. Hope Bahimbisomwe: Civil Application No. 14 of 2009** where the Court had held that **"an error of counsel should not necessarily be visited upon his client"**, he reiterated his prayer that the extension of time should be granted.

43. On this latter point, it is also worth considering a decision of the Supreme Court of Ireland where it held that **"the fact that the applicant was not to blame for the delay was not in itself sufficient reason to extend time limits (...). In general delay by legal advisors will not *prima facie* be a good and sufficient reason to extend time. Circumstances must exist to excuse such a delay and to enable the matter to be considered further. "(See *Saalim v Minister for Justice,***



Equality and Law reform, Supreme Court of Ireland, [2002] IESC 17,

<http://www.supremecourt.ie/Judgments.nsf/60f9f366f10958d1802572ba003d3f45/30e5eddd8aba2a7680256cd7002bd6a7?OpenDocument&Highlight=0,saalim>).

44. Taken in the context of the issue at hand, this case law suggests that the Applicant's statement that he is not to blame is to be assessed in line with the circumstances under which the incident said to have caused the delay occurred. Unfortunately, as pointed out earlier, we were unable to carry out that analysis since no details were given on the drowning incident of the Applicant's Counsel's worker. Moreover, we have indicated that the Applicant ought to have acted diligently upon learning that his Counsel would not meet the statutory deadline and request that his case be attended by another lawyer from his Counsel's law firm. It is not shown anywhere that the Applicant made such a request and that it was either rejected or deemed to be impossible.
45. In the result, therefore, we are not satisfied that sufficient reason has been given for the late filing of Taxation Reference No. 1 of 2015.
46. As regards other considerations to be taken into account while the Court is exercising its discretion to grant or not the extension of time under the pre-cited Rule 4, the Applicant has pointed out one factor pertaining to the length of the delay, as the reference was filed one day after the expiration of time. The Respondent, on his part, contended that the Applicant had not stated anywhere that his Application had chances of succeeding, in any event.

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47. While we may agree with the Applicant that a one day delay in filing a reference is not inordinate, we are, however, also aware of this Court's decision in Hon. Sitenda Sebalu, Application No. 9 of 2012 (supra), where it held that the Court's discretion in considering such a factor arises only after sufficient reason for extension of time has been established and that the discretion under Rule 4, just like any other discretion, must be exercised judicially and not arbitrarily or capriciously, nor should it be exercised based on sentiment or sympathy. Having found that no sufficient reason was given, we therefore find no merit in the aforesaid argument.

48. As for the other factor pertaining to chances of success or otherwise of the taxation reference, the Respondent's argument that the Applicant did not plead that his reference had chances of success was not rebutted so as to allow the Court to assess rival arguments on the matter. But suffice it to state that, like the consideration related to the length of the delay above, this one also has to be assessed after the test of sufficient reason has been passed satisfactorily. The matter is in any event moot as we have found that no sufficient reason for the delay has been given.



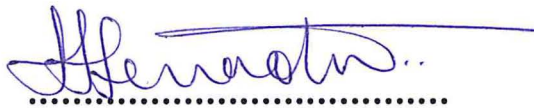
E. DISPOSITION

49. Having so held, we make the following final orders:

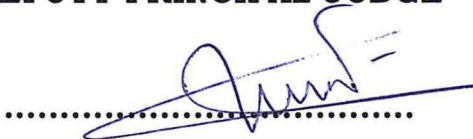
- i) *The prayer for extension of time for filing Taxation Reference No. 1 of 2015: Godfrey Magezi v National Medical Stores against the decision rendered in Consolidated Taxation Causes Nos. 2 and 4 of 2014: National Chemical Stores & Quality Chemicals Industries Ltd v Godfrey Magezi is denied;*
- ii) *The prayer for validation of the late filing of Taxation Reference No.1 of 2015: Godfrey Magezi v National Medical Stores is also denied.*
- iii) *This Application is therefore dismissed with costs to the Respondent as costs follow the event.*
- iv) *Consequently, Taxation Reference No. 1 of 2015 is hereby struck out.*

It is so ordered.

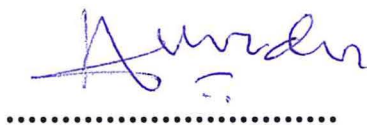
Dated, delivered and signed at Arusha this 30th day of June 2016.



**ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE**



**FAUSTIN NTEZILYAYO
JUDGE**



**FAKIHI A. JUNDU
JUDGE**

