

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: MSOFFE, J.A., MBAROUK, J.A., And LUANDA, J.A.:)**

**TAXATION REFERENCE NO. 12 OF 2007**

**JOHN ELIAFYE ..... APPLICANT**

**VERSUS**

**MICHAEL LESANI KWEKA ..... RESPONDENT**

**(Reference from the Decision of a single Judge  
of the Court of Appeal of Tanzania at Dar es Salaam)**

**( Kileo, J.A.)**

**dated the 23<sup>rd</sup> day of October, 2007**

**in**

**Taxation Reference No. 7 of 2005**

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**RULING OF THE COURT**

10<sup>th</sup> February, & 3<sup>rd</sup> March, 2010

**MBAROUK, J.A.**

Before us is a taxation reference from the ruling of a single Judge (Kileo, J.A.) in Taxation Reference No. 7 of 2005, made under Rule 119(5) of the Court of Appeal Rules, 1979.

When the reference was called on for hearing, the respondent was absent though duly served through the office of his advocate Mr. Sylvester Shayo on 2<sup>nd</sup> February, 2010. For such non – appearance of

the respondent the Court invoked Rule 63(2) of the Court of Appeal Rules 2009 and ordered the reference to proceed for hearing.

At the hearing, the applicant appeared in person. He faulted the learned single Judge for not having considered his submission on items No. 2 and 7 to his bill of costs as presented before the Taxing Officer. The applicant further submitted that, the learned single Judge erred when she agreed to all what the advocate for the respondent submitted.

Looking at items No. 2 and 7 of the bill of costs, the applicant is claiming, fees he paid for legal consultation and preparation of defence in Civil Application No. 6 of 1996 and Civil Appeal No. 51 of 1997. However, he failed to produce any receipt which he paid to the advocate. He even failed to name the advocate who assisted him. The applicant further faulted the learned single Judge for not taking into consideration the work done in filing his supplementary record, presumably done by a lawyer. He insisted that, he incurred expenses

to which, the Taxation Officer and the learned single Judge ought to have awarded him something.

As pointed out earlier, the applicant is aggrieved by the Taxing Officer's decision on the amounts claimed for legal consultation which was also later dismissed in a reference before a single Judge. So undaunted, he has filed this reference. In this Taxation Reference, our main task is to examine whether the Taxing Officer and the learned single Judge applied a wrong principle after disallowing the amounts claimed for legal consultancy in items No. 2 and 7 of the bill of costs.

The charges claimed in item No. 2 were T.Shs. 500,000/= whereas in item No. 7, the charges claimed were T.Shs. 1,200,000/=. The applicant conceded that he did not produce any receipt or document to substantiate the payment he made to the advocate who assisted him for the legal consultancy or preparation of the documents he has filed in court.

In the case of **Prechand Raichand v. Quarry Services of East Africa Ltd and Others** [1972] E.A 162, the erstwhile Court of Appeal for East Africa gave the following principles before the court allows costs:-

- “(i) (a) that costs be allowed to rise to such a level as to confine access to the courts to the wealthy;
  - (b) that a successful litigant ought to be fairly reimbursed for the costs he has to incur.
  - (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession; and
  - (d) that so far as practicable there should be consistency in the awards made.
- (ii) the Court will only interfere when the award of taxing officer is so high or so low as to amount.

(iii) .....

(iv) ..... "

In the instant case, the applicant claims for the reimbursement of the legal consultancy and preparation of defence made by an unnamed advocate. Taking into account the principle that a successful litigant ought to be fairly reimbursed for the costs he has incurred, the applicant has no receipt or document to substantiate the costs he has incurred. How can he be reimbursed at the time when there is no evidence that he has incurred the costs he is claiming. We, just like the learned single Judge are of the considered opinion that legal consultancy costs can only be awarded where it is proven that payments were actually made to a registered advocate. As shown herein above, the applicant has even failed to name the advocate who assisted him in legal consultancy and preparation of his defence.

In the event, we find no reason to interfere with the decision of the single Judge concerning the legal consultancy items.

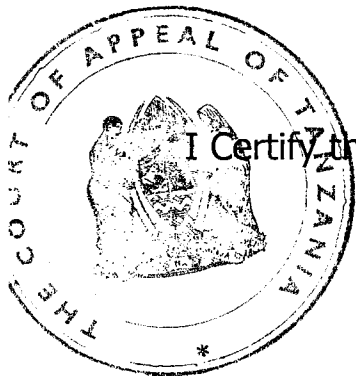
For the reasons stated herein above, the reference fails, and is hereby dismissed with no order as to costs.

DATED at DAR ES SALAAM this 12<sup>th</sup> day of February, 2010

J.H. MSOFFE  
**JUSTICE OF APPEAL**

M.S. MBAROUK  
**JUSTICE OF APPEAL**

B.M. LUANDA  
**JUSTICE OF APPEAL**



I Certify that this is a true copy of the Original.

*[Handwritten signature]*  
(M.A. Malewo)  
**DEPUTY REGISTRAR**