

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

CIVIL APPEAL NO. 50 OF 2010

(CORAM: MBAROUK, J.A., MASSATI, J.A. And ORIYO, J.A.)

AMAN MALEWO APPELLANT

VERSUS

MBEYA CEMENT CO. LTD RESPONDENT

**(Appeal from the Ruling of the High Court of Tanzania
at Mbeya)**

(Kalombola, District Registrar)

dated the 23rd day of July, 2009

in

Civil Case No. 2 of 2002 and DC Civil Appeal No. 29 of 2004

RULING OF THE COURT

5th & 8th July, 2011

ORIYO, J.A.:

The appellant, Aman Malewo was aggrieved by a decision of the Taxing Officer, Hon. H.H. Kalombola, then, the District Registrar of the High Court, in DC Civil Appeal No. 29 of 2004. Apparently, DC Civil Appeal No. 29 of 2004 originated from Employment Cause No. 1 of 2002 in the District Court of Mbeya at Mbeya. Having lost the cases in both courts, the appellant was condemned to costs which was taxed at a total sum of Shs. 6,480,500/=, the subject matter of the appeal.

At the hearing of the appeal the appellant was unrepresented and appeared in person while the respondent company was represented by Mr. Mika Mbise, learned advocate. Mr. Mbise raised points of preliminary objection, notice of which had earlier been filed. The Notice of Preliminary Objections filed in terms of Rule 107 of the Tanzania Court of Appeal Rules, 2009, contained three objections that:-

1. The Ruling of Hon. H. H. Kalombola, District Registrar, in a Bill of Costs dated 23/07/2009 in DC Civil Appeal No. 29 of 2004 is, under section 5 (1) and (2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002, not appealable to this honourable Court.
2. The Memorandum of Appeal seriously offends Rule 93 (1), (2) and (3) of the Tanzania Court of Appeal Rules 2009 in that it contains arguments, submissions and matters totally unnecessary and irrelevant to the decision appealed against.
3. The Record of Appeal offends Rule 96 (1) and (2) of the Court Rules.

Submitting briefly to substantiate the first ground of objection, Mr. Mbise contended that as the subject matter complained of in the appeal is a decision of a Taxing Officer in a Bill of Costs, the appeal is incompetent because such appeals are not provided for under section 5 (1) and (2) of the Appellate Jurisdiction Act. He stated that such appeals are provided for in other laws but do not directly come to this Court.

In response, the respondent objected to Mr. Mbise's submissions on the incompetency of the appeal. As a layman, he argued and believed that since the decision was made in the High Court, his appeal was competently filed in this Court.

As the anchor of Mr. Mbise's first objection is section 5 of the Appellate Jurisdiction Act, we find it useful to reproduce the relevant part as hereunder:-

"5. - (1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-

- (a) against every decree, including an *ex parte* or preliminary decree made by the High Court in a suit under the Civil Procedure Code, in the exercise of its original jurisdiction;

- (b) against the following orders of the High Court made under its original jurisdiction, that is to say-
- (i) an order superseding an arbitration where the award has not been completed within the period allowed by the High Court;
 - (ii) an order on an award stated in the form of a special case;
 - (iii) an order modifying or correcting an award;
 - (iv) an order filing or refusing to file an agreement to refer to arbitration;
 - (v) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
 - (vi) an order filing or refusing to file an award in an arbitration without the intervention of the High Court;
 - (vii) an order under section 95 of the Civil Procedure Code, which relates to the award of compensation where an arrest or a temporary injunction is granted;

- (viii) an order under any of the provisions of the Civil Procedure Code, imposing a fine or directing the arrest or detention, in civil prison, of any person, except where the arrest or detention is in execution of a decree;
 - (ix) any order specified in Rule 1 of Order XLIII in the Civil Procedure Code, or in any rule of the High Court amending, or in substitution for, the rule;
 - (c) with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court.
- (2) Notwithstanding the provisions of subsection (1)-
- (a) except with the leave of the High Court, no appeal shall lie against-
 - (i) any decree or order made by the consent of the parties;
 - or
 - (ii) any decree or order as to costs only where the costs are in the discretion of the High Court;”

Having been prompted by the Court as to what is the remedy available to a party dissatisfied with a decision of the Taxing officer, Mr. Mbise stated that such objections go before a Judge of the High Court as a reference for a decision. He further stated that the relevant law is The Advocates' Remuneration and Taxation of Costs Rules, 1991; GN 515 of 6/12/1991 (the Rules), made under the Advocates Act, Cap 341, RE 2002.

We have found it convenient to reproduce the relevant Rules, 3-5 under GN 515 as hereunder:

- "3. The Taxing Officer for the taxation of bills under these Rules shall be the Registrar, a District or Deputy Registrar of the High Court or such other officer of the court as the Chief Justice may appoint.
4. Whenever an advocate shall have lodged a bill for taxation with the necessary papers and vouchers the Taxing Officer shall thereupon issue a notice fixing the time at which the taxation shall take place.

5. (1) **Where any party objects to a decision of the Taxing Officer, he may refer his objection for the decision of a judge of the High Court.**

(2) the objector shall proceed by way of Chamber application, supported by an affidavit to be filed within 21 days after the issue of the certified copy of the officer's decision and to be served upon all other parties who were entitled to appear on such taxation."

(Emphasis added).

When section 5 of the Appellate Jurisdiction Act is read together with Rule 5 of the Advocates' Remuneration and Taxation of Costs Rules, there is, clearly, nothing in the two provisions which would lend support to Mr. Malewo's contention that the appeal is competently in this Court.

GN 515 of 1991 cannot be said to be new, having been around for over twenty (20) years that objections from the taxing officer's decision do not come to the Court but to the High Court for determination. This is a statutory requirement which is not discretionary. It must be complied with.

It was unfortunate that the appellant in the instant appeal did not proceed as the rules stipulate and there is no avenue for such objections to come to this Court by way of an appeal.

For the reasons stated herein above, we find ourselves constrained to agree with Mr. Mbise on the first point of objection that the appeal before us which arose from the Taxing Officer's decision in a Bill of Costs (is) not appealable to this Court in terms of section 5 (1) and (2) of the Appellate Jurisdiction Act.

In the event, we think that this point of objection sufficiently disposes of the matter. Once the appeal is struck out there will be no Memorandum of Appeal or Record of Appeal left before us for the determination of the 2nd and 3rd objections. Accordingly, the appeal is struck out. We make no order as to costs as the matter originates from an Employment Cause.

It is ordered.

DATED at **MBEYA** this 6th day of July, 2011.

M.S. MBAROUK
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL