

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

CIVIL APPEAL NO. 25 OF 2010

(CORAM: MUNUO, J.A., KILEO, J.A., And MANDIA, J.A.)

**M/S SOPA MANAGEMENT LIMITED APPELLANT
VERSUS**

M/S TANZANIA REVENUE AUTHORITY..... RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Arusha)**

(Chocha, J.)

dated the 30th day of August, 2007

in

Msc. Civil Reference No. 9 of 2006

JUDGMENT OF THE COURT

29th February & 05th March, 2012

MUNUO, J.A:

On the 26th September, 2000, the High Court of Tanzania, Mushi J. struck out **Civil Case No. 22 of 1998** with costs for lack of jurisdiction to determine matters relating to hotel levy, sales tax, stamp duty and car benefit imposed on the present appellant, SOPA Management Ltd. by the Tanzania Revenue Authority, now the respondent. Three and a half years

later, the respondent decree holder lodged a Taxation Cause for Bill of Costs totaling shillings 514,753,580/= costs of the suit which the High Court struck out on the 26th September, 2000. On being served with the Bill of Costs, Mr. Maro, learned advocate for the appellant, filed a preliminary objection to the effect that the Taxation Cause was time barred. In his Written Submission in support of the preliminary objection, Mr. Maro, learned advocate, quoted the learned author, B.B. Mitra on his Commentaries. On the 1963 Indian Law of Limitation Act. The Book is titled the Limitation Act 1963, 20th Edition, Eastern Law House, Delhi 1998 at page 11 wherein it is stated;

"an unlimited and perpetual threat of litigation creates insecurity and uncertainty some kind of limitation is essential for public order."

Learned Counsel Maro also referred to McGee, Commentaries on Limitation Periods, 2nd Edition, 1994 at page 5 where the learned author refers to the policy and spirit behind the limitation period thus:

"....Arguments with regard to the policy underlying statutes of limitation fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometimes described as "**statutes of peace.**" The second looks at the matter from a more objective point of view. It suggests that a time limit is necessary because with the lapse of time, proof of a claim becomes more difficult, documentary evidence is likely to have been destroyed and memories of witnesses will fade. The third relates to the conduct of the plaintiff. It being thought right that a person who does not promptly act to enforce his rights should lose them. All these justifications have been considered by the courts."

In the Written Submission on the preliminary objection, learned advocate Maro also referred to item 21 of Part III to the First Schedule to the Law of Limitation Act, 1971 which provides, **interalia;**

"21. Application under the Civil Procedure Code, 1966, the Magistrates Courts Act, 1963 or other written law which no period of limitation is provided in this Act or any other written law..... sixty days"

Before us, Mr. Maro did not refer to McGee but he referred to the Indian Limitation Act by the learned authors B.B. Mitra, M. R. Mallick, 20th Edition, Eastern Law House 1998 pages 10, 11, 1171 and 1183 and numerous other authorities to support the appeal, all stressing the need to comply with the prescribed Law of Limitation.

On his part, Dr. Mapunda, learned advocate for the respondent resisted the preliminary objection. He contended that the Taxation Cause was within the prescribed period of limitation under the provisions of item 20 to the First Schedule, Part III of the Law of Limitation Act, 1971, Act No. 10 which states:

"To enforce a judgment, decree or order of any court where the period of limitation is not provided for in this Act or any other written law.....12 years."

Dr. Mapunda submitted that the Bill of Costs falls under item 20 of the First Schedule, Part III of the Law of Limitation Act, 1971. He stated in his Reply to Mr. Maro's Written Submission on the preliminary objection that the said objection was misconceived, novel, unprecedented and has no merit at all.

The Taxation Master, Mr. Shabani Lila, as he then was, upheld the preliminary objection giving rise to **Miscellaneous Civil Cause No. 9 of 2006** in the High Court of Tanzania in which counsel for the present respondent asked the High Court to quash the Ruling of the Taxing Master and let the Taxation Cause proceed on merit. In the Reference to the High Court either party stuck to their guns:

Dr. Mapunda contending that the Bill of Costs falls under item 20 to the First Schedule of the Limitation Act, 1971 which provides a limitation

period of 12 years while Mr. Maro insisted that the period of limitation for applications of Bills of Costs is sixty days so the Taxation Cause instituted by the decree holder is time barred. Chocha, J. ruled that the Bill of Costs falls under item 20 of the First Schedule, Part III of the Law of Limitation Act, 1971 so it is within the prescribed period of limitation of 12 years. The learned judge ordered that the Taxation Cause be heard on merit. Dissatisfied, learned counsel for the appellant preferred the present appeal.

Mr. Maro, learned advocate for the appellant filed 2 grounds of appeal namely:

1. That the High Court erred in law treating as and holding that a Bill of Costs constitutes an application for execution.
2. That the High Court erred in law in holding that Taxation Cause No. 13 of 2004 was not time barred.

Hence, counsel for the appellant urged us to quash and set aside the decision in Miscellaneous Civil Reference No. 9 of 2006 with costs. We

wish to note here that the said Miscellaneous Civil Reference No. 9 of 2006 was instituted as Miscellaneous Civil Cause No. 9 of 2006.

In this appeal, Mr. Maro observed and Dr. Mapunda conceded that there is no period of limitation for filing a Bill of Costs for Taxation and that such matter would fall under items 20 or 21 of the 1st First Schedule to the Limitation Act, 1971.

Counsel for the appellant faulted the learned judge for holding that a bill of costs is a step towards enforcement of the judgment thence the period of limitation for bills of costs should fall under the provisions of item 20 to the First Schedule Part III of the Law of Limitation Act No. 10 of 1971, which is 12 years. Mr. Maro maintained that bills of costs are applications for determining the costs spent in litigation so they fall under item 21 to the First Schedule III of the Law of Limitation, 1971 which is sixty days only which means the respondent's bill of costs was time barred because it was filed 3 ½ years after the judgment awarded the same. Citing **B. B. Mitra The Limitation Act 1963 12th Edition by M. R. Mallick, Calcutta new Delhi Eastern Law House page 528**, counsel for the appellant submitted that a bill of costs is not part of the decree

which enjoys a period of limitation of 12 years; rather a bill of costs is instituted by filing application and applications not specifically provided for under the Law of Limitation, such application falls under the provisions of item 21 of the First Schedule to the Limitation Act, 1971 which is 21 days.

The issue is whether the Bill of Costs in dispute is time barred.

This matter need not detain us. While it is true that a bill of costs is linked to the decree to the extent that the decree holder would be entitled to costs of the suit if there is no order for withholding costs, a bill of costs is instituted separately as an application to determine the costs of litigation on the part of the successful party. Because the Law of Limitation Act, 1971 does not provide a period of limitation for lodging a bill of costs, such application would in law fall under item 21 to the First Schedule Part III of the Law of Limitation Act, 1971, which states *inter-alia*:

"21. Application under the Civil Procedure Code, 1966, the Magistrates Court Act, 1963 or other written law of which no period of limitation is provided in this Act or any other written law Sixty day."

In view of the clear provisions of item 21, the learned judge erroneously reversed the decision of the Taxing Master. Hence, we quash and set aside the decision of the High Court and hereby restore the decision of the Taxing Master. We are satisfied, therefore, that under item 21 of the First Schedule of the Law of Limitation Act, 1971, the Bill of Costs presented in Civil Cause No. 13/2004 arising from No. 22 of 1998 was time barred.

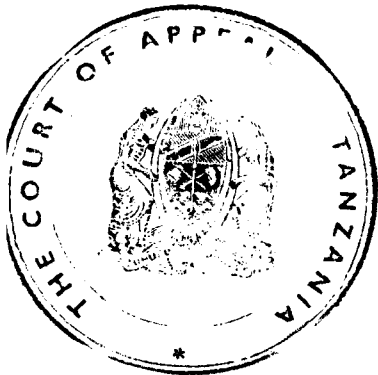
In the result the appeal has merit and is hereby allowed with costs.

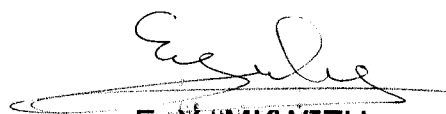
DATED at Arusha this 5th day of March, 2012.

E. N. MUNUO
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL