

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL REFERENCE NO. 17 OF 2021

MUSSA SHAIBU MSANGIAPPLICANT

VERSUS

HAMOUD MOHAMED SUMRY.....1ST RESPONDENT

SUMRY HIGH CLASS LIMITED2ND RESPONDENT

SUMRY BUS SERVICES LIMITED3RD RESPONDENT

***(Application for Reference from the Decision of the Taxing Officer
of the Court of Appeal of Tanzania at Dar es salaam***

(Lyimo, DR.)

Dated the 16th day of November, 2021

in

Bill of Costs No. 63 of 2020

RULING

20th March & 12th June, 2023

KENTE, J.A.:

This application for reference which is made under Rule 125 (1) and (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules), is directed against the decision of the Deputy Registrar of this Court (Ms. Lyimo) in her capacity as taxing officer. The said decision which is dated 16th November, 2021 is in respect of bill of Costs No. 63 2020 which emanates from Civil Application No. 255 of 2015. In her decision, after having invited the parties to address her on the competence or otherwise of the said bill of costs, the learned taxing officer was of the view that it was bad in law for being time barred and offending the format as prescribed under item

3 (1) (a) to (e) of the Third Schedule to the Rules. She accordingly went on striking it out.

Dissatisfied by the said decision and deploying the legal services of Mr. Deogratus Ogunde learned advocate, the applicant contended in the present application thus:

- 1. The Taxing Officer made a serious error of law by misdirecting herself in holding that time limit to file bill of costs in this Court is twenty one (21) days contrary to the law and practice of the Court; and*
- 2. The Taxing officer erred in holding that the applicant's bill of costs was vague by containing the word "FUTURE" in the date column and ignoring all principles of law that such costs are grantable and further that, even if the said word may constitute an anomaly (which it does not), Is curable by alteration and not striking out the bill of costs.*

In reply, Mr. Augustino Ndomba learned advocate, who appeared for the respondent was opposed to the application and he thus prayed that I dismiss it with costs.

I will start with the first point raised by Mr. Ogunde regarding the time limit within which to file a bill of costs in this Court. As correctly submitted by Mr. Ogunde and gracefully conceded by Mr. Ndomba, the time limit for filing bill of costs in this Court is governed by paragraph 2

(2) of the Third Schedule to the Rules. To appreciate its provisions, the said sub-paragraph provides in no ambiguous terms that:

"A bill of costs shall be lodged as soon as practicable after the making of the order for costs or not later than twenty one days after a request in writing thereof by the party liable, or such further time as the Registrar may allow".

In support of the application, Mr. Ogunde submitted, correctly so in my respectful view that, a plain interpretation of the above-quoted sub-paragraph does not pose any difficulty. To his and my understanding, it means that a bill of costs has to be lodged.

- (a) as soon as practicable after making of the order for costs, or*
- (b) not later than twenty one days after a request in writing by the party liable, or*
- (c) such further time as the Registrar may allow.*

Notably, in contesting the application, Mr. Ndomba submitted rather forcefully that, by filing the bill of costs after fifty nine (59) days of receiving a copy of the decision awarding him costs, the applicant had gone into a deep slumber over his rights and that, in terms of paragraph 2(2), he ought to have requested for extension of time before he could do so.

With unfeigned respect, I do not subscribe to Mr. Ndomba's view of the law. Going by paragraph 2(2) of the Third Schedule to the Rules, it

should be obvious that the requirement that a bill of costs has to be lodged not later than twenty one days after a request in writing by the party liable, upon which the impugned decision by the Taxing Officer was partly based, has no application to the instant case. As correctly urged by Mr. Ogunde, that requirement would come into play in a situation where, not as in here, if a party liable to pay costs (the respondent in this case), had made a request in writing to the Registrar.

Applying the above interpretation of the law, the immediate question that falls for consideration is whether or not the applicant's filing of the bill of costs after fifty – nine days of receipt of the Court's decision awarding him costs was not a period which can be said to have been as soon as practicable as argued by Mr. Ndomba.

On this question, Mr. Ogunde emphasized in his submissions that the bill of costs was filed without undue delay and by this emphasis, I understood him to mean that, the bill of costs was filed as soon as practicable after his client received a copy of the Court's decision in Civil Application No. 255 of 2015 awarding him costs.

Without demur, I find the argument by Mr. Ogunde fairly convincing as bill of costs are ordinarily filed in this Court within sixty days of the order awarding costs. It follows therefore that, in the instant case, the bill of costs having been filed on the fifty-ninth day following delivery of

the Court's decision making the order for costs, cannot be said to have been lodged beyond the period prescribed by law. I thus find merit in the applicant's first ground of complaint which I hereby sustain.

Next is the finding and subsequent holding by the taxing officer that the bill of costs offended the prescribed format as to deserve to be struck out.

With due respect, in my judgment, I would not subscribe to such a view. For it appears to me that the format of the bill of costs as provided for under paragraph 3 (1) (a) of the Third Schedule to the Rules, is a general guidance which may not necessarily be all inclusive. In saying so, I have in mind for instance such expenses which may be reasonably and actually incurred by the decree – holder after the making of the order for costs. While I am not in a position to hold that such costs which the decree-holder might incur subsequent to the order of the court awarding him costs are to be included in the bill of costs, I am convinced that their inclusion will not render incompetent the entire bill of costs as erroneously held by the taxing officer in this case. If anything, the taxing officer could have either ignored or taxed off the costs falling under folio No 24,25,26 and 27 which are said to have been incurred by the applicant after the Court had delivered its ruling on 5th October, 2020 awarding him costs.

In such a situation, the remaining part of the bill of costs would have remained so as to be taxed according to law.

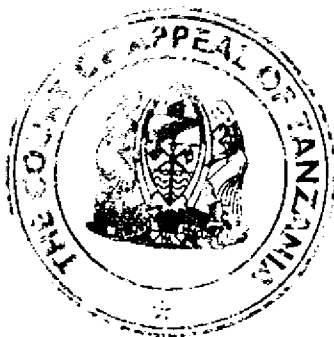
In view of the above position, I grant this application and proceed to quash the whole proceedings and set aside the ruling and order made by the taxing officer dated 16th November, 2021. Instead, I order that, the bill of costs be heard and taxed on merit in accordance with the law. In the interest of justice to both sides, it is directed that the taxation be conducted by another taxing officer of competent jurisdiction.

Since the decision leading to the present application and ruling was made by the taxing officer who had suo motu inquired into the competence or otherwise of the bill of costs before her, I order for each party to bear its own costs.

DATED at DAR ES SALAAM this 7th day of June, 2023.

P. M. KENTE
JUSTICE OF APPEAL

The Ruling delivered this 12th day of June, 2023 in the presence of Mr. Deogratus Ogunde, learned counsel for the Applicant, also holding brief for Mr. Augustino Ndomba for the Respondents, is hereby certified as a true copy of the original.




G.H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL