

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISC. CIVIL APPEAL NO. 20 OF 2001

(From the decision of the District Court of  
Rungwe District at Tukuyu in Civil Appeal No. 63  
of 1997 and Tukuyu Urban Primary Court Civil Case  
No. 47 of 1997)

ANDREW MWAKALUKWA:::APPELLANT

VERSUS

AGGREY MWAMBIJE:::RESPONDENT

JUDGMENT

MACKANJA, J.

The appellant brought a suit before the Tukuyu Urban Primary Court claiming a liquidated sum of shs.324,114.00 from the respondent. He was awarded a sum of shs.100,000.00 as damages. That decision was set aside on appeal before the Rungwe District Court sitting at Tukuyu in terms of that Court's Civil Appeal No.63 of 1997. Each party was directed to pay own costs. In spite of that order the appellant, who had long since expired, but through the administrator of his estate, filed a bill of costs in the sum of shs.687,030.00 which was taxed as presented. The present appellant did not appeal, instead he instituted an application for review. It is against the taxing master's decision that this appeal has been brought. So Mr. Mwangole, learned counsel for the appellant, prays that his client be given his bidding.

Mr. Mbiye, learned counsel for the respondent has submitted that the proper way to challenge taxation of costs is not by way of an appeal. It ought to be by way of a reference to the High Court. He did not tell us under what procedural law the appellant ought to have done so. Mr. Mbiye is right all the same; the procedure is laid down under the Advocates Remuneration and Taxation of Costs (Amendment) Rules, GN 89 and GN 159 made under the Advocates Ordinance, Cap. 9. Instead of appealing, therefore,

the appellant was entitled only to file a reference. This Court has made several decisions on this matter and I cite only two cases for clarification: Maximilian Rwabulala v. Emilian Kalugala [1987] T.L.R. 2 and Daudi Masumbuko v. Eliabu D. Mwisu & Another (HC) Misc. Civil Appeal No.2 of 2002 (Mbeya Registry)- Unreported.

From the above observations I hold that the appeal is incompetent and it is accordingly struck out with costs.

sgd: J.M. MACKANJA

JUDGE

14/11/2003

Date: 21/11/2003

Coram: S. Bongole, DR

For Appellant: Mr. Mbise for - present

For Respondent: Mr. Mwangole for - present

B/C: Mrs. S. Kasubiri

Delivered.

sgd: B. BONGOLE, DR

21/11/2003

Certified true copy of the original.

