

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC.APPLICATION NO. 175 OF 2002

COSTANTINO SHILOGILE.....RESPONDENT

VERSUS

**^{Ro}
DIRECTOR MOGOGORO
MUNICIPAL COUNCIL.....RESPONDENT**

RULING

RUGAZIA J.

The applicant in this matter who is a Court Broker was aggrieved by the Taxing Master's decision to tax off some of the items the applicant thought were properly incurred. According to him, it was wrong for the taxing master to hold that 2% of the value of the attached property must cover all expenses incurred during execution of the decree without disbursement. It was his assertion that disbursements, which are expenses incurred during execution of a decree are dealt with separately with what is stated in part I and II of the Second Schedule to the Court Brokers and Process Servers (Appointment, Remuneration and Discipline) Rules, GN 315 of 1997, hereinafter referred to as the Rules.

The applicant submitted that since the Court made a finding that the expenses were properly incurred, then he should be reimbursed. I have carefully gone through the ruling and, with respect, the Taxing Muster never made that finding.

The respondent on its part asserted that the applicant was not entitled to more than what was granted in the lower court. The respondent argued also that it was improper to adjudge it to pay the costs instead of the 2nd respondent who is the decree holder. I regret to say that I am unable to deal with this complaint because if the first respondent felt aggrieved by the decision of the Taxing Master, that should have come to this court by way of cross reference after the applicant had made this reference which was, however, wrongly filed as a miscellaneous Civil Application. To raise it in the submission is not only improper but strange. And since the respondent never raised a finger after the Taxing Master's decision, it cannot be heard complaining now.

As already observed above, the applicant argued that the Taxing Officer misinterpreted the law and thus arrived at a wrong decision which led to this reference. Having looked at item No. 1 of part 1 of the second Schedule to the Rules this is what he said and I quote:

"it is my literal interpretation that, the Fees calculated on percentages on the estimated value of the attached property cover Fees, charges and allowances for attaching or taking possession of the movable property. The Court Broker's claim for 2% of Shs.40 million....should cover the charges, fees and allowance, the Court broker itemizes as guard services, transport etc."

The Taxing Master opined that the Court Broker could only be entitled to extra claims only where it is considered necessary to hold the property for a longer period than 30 days.

I have no quarrel at all with that finding because that is the exact wording of that item and, also, in agreement with Rule 13. However, when one looks at the proviso to Rule 13 that is when I part ways with the Taxing Master. The proviso is to the effect that where an order for sale has been made and stopped or postponed, the executing Officer is entitled to extra expenses. Pursuant to the Court Order on 25/11/2002 it is on record that sale was stopped. What is not clear is if there was already an order for sale. If there was, then it has to be found that the applicant is entitled to extra expenses and charges which were properly incurred if the learned Magistrate so opines. If that was not the case, there should be no cause for complaint because the Taxing Master's interpretation of the law was proper. A court will normally not interfere with the Taxing Master's decision unless there has been an error in principle. See Thomas J. Arthur vs. Nyeri Electricity Undertaking (1961) E.A. 492.

Having thus found, I refer the matter back to the Taxing Master to proceed with it in accordance with the dictates of the proviso to Rule 13 of G.N 315 of 1997. Costs to abide the result in the lower court.

P.A. Rugazia
JUDGE
19/8/04

15/10/2004

Coram: S.A. LILLA DR.

For the Applicant - Present in person

For the Respondent – Mrs Mavura

CC : - Pantaleo

ORDER: Ruling delivered today in the presence of the applicant present in Person and Mrs Mavura for the Respondent.



S.A LILLA

DISTRICT REGISTRAR

25/10/2004