

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NUMBER 109 of 2012

(Originating from the decision of the Taxing Officer Kinondoni District Court
dated 31st July 2012, in Civil Case No. 219 of 2001- Rusema-PRM)

CRDB BANK LTD.....APPLICANT

VS

WINLAND NGISANJATAA MAKULE

(Suing as administrator of the
Estate of Grace N. Makule who

traded as Gracious Enterprises)..... **1ST RESPONDENT**

COMRADE AUCTION MART COMPANY..... 2ND RESPONDENT

Last Orders: 31-10-2012

Ruling: 14-12-2012

RULING

JUMA, J.

The applicant, the CRDB Bank has by way of chamber application, supported by an affidavit, come to this court under Rule 5 of the **Advocates' Remuneration and Taxation of Costs Rules GN 515 of 1991** to object the decision of the Taxing Officer. The Bank is seeking two distinct orders of this court. First, the Bank would like this court to order a stay of execution of

the decision and certificate of bill of costs that had been issued by the Taxing Officer of the Kinondoni District Court. Second, the Bank would like this court to quash the decision of the Taxing Officer on reasons of illegalities.

On behalf of the Bank, the application was supported by an affidavit taken out by Wilbroad Mwakipesile the Manager of the Legal Services of the applicant. The nature of illegalities subject of objection are disclosed in paragraph 10 of the affidavit of Mr. Mwakipesile, which state:

- a) THAT, the bill of cost contained items for court broker's costs of eviction and 1st respondent's loss of rental contrary to the law.
- b) THAT, the application for bill of costs was filed out of time prescribed by law.
- c) THAT, the 1st respondent did not prove his bill of costs rather the bill of costs was granted as prayed.
- d) THAT, the bill of costs was granted without considering the applicant/judgment debtors defence filed on the 25th May, 2012.

e) THAT, the bill of costs was not drawn in five (5) columns as required by the law.

f) THAT, there is no certificate of the bill of costs in the court file.

Only Mr. Winland Ngisanjataa Makule filed a counter affidavit and written submissions to oppose this application. Comrade Auction Mart who was cited as 2nd respondent, did not file any counter affidavit to oppose this application.

Before considering the veracity of the grounds alleging illegalities, it is useful first to set out the background facts. The late Grace N. Makule had a house on Plots No. 133/1 and 134 Block F in Manzese Dar es Salaam. Before she died on September 14, 2000, Grace Makule operating under Gracious Enterprises Ltd had obtained an overdraft facility from the applicant CRDB Bank. The overdraft was made on 23rd January 1998. As security for the overdraft, the Gracious Enterprises Ltd offered legal mortgage over Plot No. 133/1 Block F, Manzese. Following the death of Ms Grace Makule, on 11 April 2001 the District Court of

Kinondoni granted the 1st respondent Winland N. Makule letters to administer the estate of the deceased.

In 2001 the 1st respondent Mr. Winland Ngisanjataa Makule suing as an administrator of the estate of Ms Grace Makule, filed Civil Case Number 219 of 2001 in the District Court of Kinondoni. Defendants to this suit included the CRDB Bank (applicant herein). The trial court delivered the judgment in favour of Mr. Makule in 2006 after declaring that that Plot Number 133/1 and 134 Block "F" in Manzese is the property of the late Grace Makule. Early in 2012 Mr. Makule filed a Bill of Costs and on 31 July 2012, six years after the Judgment and Decree, Mr. Makule as a Decree-Holder prayed to be granted his application of Bill of Costs. Rusema-PRM granted that application.

The ground of objection contending that Mr. Makule filed his application for bill of costs outside the time prescribed by law touches on jurisdiction of the subordinate court and it is a fundamental which this court must resolve before looking at other grounds of objection. I need not over-emphasise that before any court of law determines any matter, it must first satisfy

itself that has requisite jurisdiction to entertain it. I shall therefore first determine whether the bill of costs was filed before the subordinate court within the period prescribed by the law.

In the written submission filed on behalf of the Bank, Mpoki & Associates Advocates submitted on each ground of alleged illegalities separately. On whether the Mr. Makule filed his application for bill of costs outside time prescribed by law, Mpoki & Associates submitted that the Judgment of the District Court in Civil Case Number No. 219 of 2001 was delivered on 1st August 2005 whereas its bill of costs was filed without leave six years later in 2012. According to the learned firm of Advocates, the District Court should have dismissed that bill of costs for being out of limitation period. Mpoki & Associates submitted that Advocates' Remuneration and Taxation of Costs Rules, GN 515 of 1991 does not prescribe time within which bill of costs should be filed. But, the learned firm of Advocates was quick to point out that the apparent gap in GN 515 of 1991 has been filled by item 21 of Part III of the 1st Schedule to the **Law of Limitation Act, Cap. 89** which prescribes:

"Application under the Civil Procedure Code, the Magistrates' Court Act or other written law for which no period of limitation is provided in this Act or any other written law...sixty days."

Mpoki & Associates is urging me to bring the above cited provisions of the Law of Limitation Act and find that Mr. Makule has not sought an extension of time to file his bill of costs outside the sixty-day period of limitation.

Submitting on the contention that he filed his bill of costs outside the sixty days limitation period, Mr. Makule noted that he filed the bill of costs in the subordinate court on 29 February 2012. Mr. Makule further submitted that the judgment of the district court was in fact delivered on 12th April 2006. He further highlighted events which caused him to file his bill of costs six years after the delivery of the judgment of district court. These events included applications to stay the execution of the judgment of the district court which denied Mr. Makule an opportunity to file his bill of costs before 2012.

From the submissions of the opposing parties on period of limitation, it remains upon this Court to decide

whether the law has prescribed limitation period for the filing of Bill of Cost, which Mr. Makule did not comply with.

Although the **Advocates' Remuneration and Taxation of Costs Rules GN 515** does not explicitly prescribe the period within which applications for bill of costs are to be lodged, it is my opinion that the legislature did not intend to leave such period to be open ended and at the liberty of litigants. The Court of Appeal sitting in Arusha in **M/S Sopa Management Limited vs. M/S Tanzania Revenue Authority, Civil Appeal No. 25 of 2010**; considered the time limit within which a Bill of Cost must be filed. The Court of Appeal also determined whether the filing of Bill of Cost constitute enforcement of judgments and decrees falling under Item 20 of Part III of the Schedule to the Law of Limitation Act with twelve years limitation period. The Court of Appeal held that for purposes of limitation period, a Bill of Cost is an application involving hearing and does not fall under enforcement of Judgements and Decrees:

"..A Bill of Cost filed under the Advocates Act in the High Court is an application falling under Item 21 of Part III of

the Schedule to the Law of Limitation Act. Its shelf life cannot therefore be the same as an application for enforcement of a court's decision. In the circumstances it ought to have been filed within sixty days of the date that order for costs was made. As it is, it was filed over three years later....."

It is clear from the records that the judgment of the district court is dated 1st August 2005. It was certified ready for collection on 25 September 2005. The Decree shows that the suit was called up for judgment on 1st August 2005 before L.J. Mbuya-PRM and was delivered by F.S. Mohamed-RM on 12 April 2006. Mpoki & Associates are with due respect correct that item 21 of Part III of the 1st Schedule to the **Law of Limitation Act** has prescribed sixty (60) days within which to apply for bill of costs. By filing his Bill of Costs at the subordinate court on 29 February 2012, Mr. Makule clearly did not comply with prescribed 60 days limitation period.

After finding himself out of the period of limitation, Mr. Makule should have applied for leave of the subordinate court to file his bill of costs out of time. The reasons which Mr. Makule highlighted to justify his filing his Bill of Costs six years after the delivery of the

judgment of district court are relevant when applying for extension of time.

Under section 3 of the **Law of Limitation Act**, the consequence of any matter that is filed outside the period prescribed by the law is dismissal whether or not limitation has been set up as a defence.

In upshot, with my finding that Mr. Makule the 1st respondent herein filed his Bill of Costs outside the prescribed period, I need not consider other grounds in this application which contend illegalities. The decision of the Taxing Officer, Kinondoni District Court in Civil Case Number 219 of 2001 dated 31 July 2012 is hereby quashed. The applicant CRDB Bank is awarded costs of this application.

DATED at DAR ES SALAAM this 14th day of December, 2012.



**I.H. Juma
JUDGE**

Ruling is delivered in the presence of Mr. Winland Makule (1st Respondent)



**I.H. Juma
JUDGE
14/12/2012**

