

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

CIVIL REFERENCE NO. 4 OF 2015

(Originating from Arusha District Land and Housing Tribunal of Arusha, Bill of Costs No. 33 of 2011)

1. ALFRED LEMETI	}APPLICANTS
2. LONING'O LEMETI		
3. ISRAEL LEMETI		
4. JOHN LEMETI		
5. MESHILIEKI LEMETI		
6. PENIEL LONING'O		
7. SAIGURAN LEMETI		
8. LOMATAN LEMETI		

Versus

GODWIN LENGINA MASANGWA.....RESPONDENT

Date of last Order: 26/10/2015

Date of Ruling: 16/11/2015

RULING

MASSENGI, J

The Applicants after being dissatisfied with the decision of Taxing Master in Bill of Costs No. 33 of 2011 filed this application under the provisions of section 5 (1) and 5 (2) of the Advocates' Remuneration and Taxation of Costs Rules, 1991 G.N No. 515, applying for the following orders;

- (a) That the decision of the Taxing Officer in Bill of Costs No. 33 of 2011 before the District Land and Housing Tribunal at Arusha dated 11th June 2015 be set aside.
- (b) Costs to follow the event.
- (c) Any other orders as the Honourable Court may deem just and equitable to grant.

This application is supported by a joint affidavit of the Applicants. With consent of both parties, this court ordered the hearing of this application to be conducted by way of written submissions whereby the Applicants were represented by Mr. Lawena learned counsel while the respondent was represented by Mr. Koisenge learned counsel. The Applicants were ordered to file submissions in chief by 29/10/2015, the respondent to file reply submission by 5/11/2015 and rejoinder if any to be filed by 10/11/2015. Both parties complied with the scheduled order.

Arguing the application, learned counsel for the Applicants submitted that the District Land and Housing Tribunal Bill of Costs No. 33 of 2011 was based on Land Application No. 49 of 2007. In the said Bill of Costs, the respondent prayed for the payment of Tshs. 8,000,000/= as instruction fees to deal with the matter. That amount was taxed as presented simply because the same was not challenged. He contended that the Taxing Master erred in taxing the said amount as presented without taking into consideration the nature of the case and referred this court to the case of **SIANGA VS. ELIAS [1972] H.C.D 66** and the case of **PREMCHAND RAICHAND**. He further submitted that the amount claimed as instruction fees was punitive and an abuse of the powers of the tribunal and referred

to the case of **REGISTERED TRUSTEES OF THE CASHEWNUT INDUSTRY DEVELOPMENT FUND VS. CASHEWNUT BOARD OF TANZANIA (2011) 1 E.A 407**. He therefore contended that, had the Taxing Officer put into consideration the nature of the matter she would not have taxed the bill at Tshs. 8,000,000/=. As such prayed this court to set aside order of the Taxing Master dated 11th June, 2015 as the same is an abuse of the court process.

In reply submission, the respondent's counsel started by drawing attention to this court by way of Preliminary Objection on the competence of this application; that this application is hopelessly time barred and the same should be dismissed with costs. He argued that the ruling which is the subject of this application was delivered on June 11th, 2015 in the presence of all Applicants except the 5th and the 8th Applicant. The Applicants filed this application on 14th August, 2015 which is 64 days later. It is his argument that, according to rule 5 (1) and 5 (2) of the Advocates' Remuneration and Taxation of Costs Rules, 1991 (G.N No. 515/1991) limitation of any reference is cited as 21 days. He added that even if will be assumed that there was exclusion of the period which the Applicants spent to get and obtain copy of the decision, still the application is time barred as the Applicants were supplied with the copy of decision of the Taxation Officer on 22/ 07/2015 as evidenced by exchequer receipt hence the application was required to be filed not later than 12th of August, 2015. He therefore prayed this application be dismissed in terms of section 3 (1) of the Law of Limitation Act, Cap. 89 R.E 2012 and the case of **STEPHEN**

MARUNDA VS. SHIRIKA LA USAFIRI DAR ES SALAAM [1982] TLR 258 and BENEDICTOR VS. LAMBERT [1971] HCD 242.

Alternatively, he submitted that this application is devoid of merits and the same has been preferred without legal sense. He contended that the amount awarded as instruction fees was reasonable and fair and that the tribunal was of the opinion that as the Applicants' counsel did not dispute the said amount then the same was charged as prayed; surprisingly at this stage the Applicant together with their counsel is now challenging the same.

He further submitted that the case giving rise to the Bill of Costs No. 3/2011 is Application No. 49/2007 which was instituted on March 12th, 2007 until August 26th, 2010 when judgment was delivered, that is three years and five months. He stated that the trial involved examination of nine Applicants, witnesses and eleven respondents and their witnesses. Hence the tribunal considered the length of the case, time spent to prepare witnesses and as well preparations of the defence case. He therefore submitted that amount awarded was reasonable and fair which need not to be contested and supported his argument with the case of **HARDER BIN MOHAMED ELEMANDRY & OTHERS VS. KHADIJA BINTI ALLI (1956) 23 EACA 313** and the case of **UJAGAR SINGH VS. THE MBEYA COOPERATIVE UNION (1968) HCD 173**. Basing on that, he prayed this application be dismissed with costs.

I have considered the submission of both parties and gone through the records of the tribunal. The respondent's counsel in the course of his submissions he raised a preliminary objection that the Applicants'

application is time barred as the ruling of the Taxing Master which is the subject of this application was delivered on 11/6/2015, the certified copies of the ruling was obtained on 22/7/2015 while this application was filed on 14/8/2015 after lapse of 64 days contrary to rule 5 (2) of the Advocates' Remuneration and Taxation of Costs Rules (G.N No. 515/1991). We are all aware that preliminary objection on time limitation is a pertinent issue which can be raised at any stage of the proceedings before ruling/judgment as such this court is obliged to deal with that issue first before proceeding with determination of the application on merits.

Rule 5 (1) of the Advocates' Remuneration and Taxation of Costs Rules (supra) provides the jurisdiction of this court on objection to a decision of the Taxing Officer. Rule 5 (2) of the same rules, further provides that;

"The objector shall proceed by way of Chamber application, supported by an affidavit to be filed within 21 days after the issue of the certified copy of the officer's decision and to be served upon all other parties who were entitled to appear on such taxation."
(emphasis supplied)

As provided by the law above, the limitation period to file an application objecting the decision of Taxing Master starts to run from the date which the certified copy of the said decision is issued. The records of the tribunal show that the decision of Taxing Master was delivered on 11/6/2015 and the certified copy of the said decision was issued on 22/7/2015 the date when the Applicants were supplied with the certified copy of the said

decision as evidenced by a copy of exchequer receipt No. 5799524. Computing from 22/7/2015, the date when the Applicants were supplied with the certified copy of the decision of the Taxing Master to 14/8/2015 when this application was filed, it gives us 24 days. According to rule 5 (2) of the Advocates Remuneration Rules (supra), an application objecting the decision of Taxing Master must be filed within 21 days from the date of issuing the certified copy of the decision; as such I concur with submission of the respondent's counsel that this application was filed out of time and without a leave of this court to do so.

Basing on the above, I therefore sustain the preliminary objection raised by the respondent's counsel and accordingly dismiss this application with costs.

Order accordingly.

(SGD)
F.H. MASSENGI
JUDGE
16/11/2015

Ruling delivered in Court this 16th day of November, 2015 in the presence of Applicants in person and respondents in person. Right of appeal fully explained.



(SGD)
F.H. MASSENGI
JUDGE
16/11/2015

I hereby certify this to be a true copy of the original.


DEPUTY REGISTRAR
ARUSHA

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