

IN THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL REFENCE NO 02/2020

LEO ATTORNEY-----APPLICANT

VERSUS

PANGEA MINERAL-----RESPONDENT

RULING

Date of last Order: 24/1/2020

Date of Ruling: 4/3/2020

Hon. L. M. Mlacha, J

This is a ruling on a reference of the Taxing Master (J. C. Tiganga, DR as he then was) made in Miscellaneous Civil Application No. 752 of 2017 which was filed by Leo Attorneys (herein after to be referred as Applicants) against Pangea Minerals Limited and Acacia Mining Limited (herein after to be referred as Respondents. It is reflected in the pleadings which were presented before the Taxing Master that the applicants were engaged by the Respondents to represent them in this court in Miscellaneous Application No. 185/2015 and prepared pleadings.

They proceeded to make submissions but while waiting for the decision, the Respondents decided to withdraw the instructions but could not pay for the work done. They thus filed the application under section 62 (1) (2) (a) (b) and 3 of the Advocates Act Cap 341 R. E. 2002 Seeking the following orders:-

- (a) That, the Honourable court be pleased to order taxation of the Advocate – Client Bill of costs annexed hereto in respect Misc. Application No. 185/2015 between Michael Ngalo vs. Pangae Minerals and Acacia Mining Limited, in which the Applicant represented the Respondents.
- (b) That, until the Taxation is completed, no action should be commenced on the bill and any action already commenced be stayed.
- (c) That, the Honourable court be pleased to grant any other order (s) and relief (s) that it consider just and convenient to grant.

When the application was called for hearing before the Taxing Master, the Respondents came with a Preliminary Objection to the effect that the Deputy Registrar had no jurisdiction to determine the application. That, the application ought to have been determined by a judge in terms of section 62 (1) (2) and 3 of the Advocates Act Cap 341 R. E. 2002. The parties were actively engaged in the Preliminary Objection which was dismissed. The application was ordered to proceed for hearing.

When the matter was set for hearing, Mr. Yusuph Shekh appeared for the applicants while Miss Anthonia Agapiti appeared for the Respondent. Mr. Shekh made his submission in support of the

application seeking the grant of the orders contained in the chamber application but when Miss Anthonia was called to make a reply, she kept on repeating to say that, the Deputy Registrar had no jurisdiction to hear the matter. In response to that, the Taxing Master had this to say in

“ having pointed out as above, and having coupled with the instance by the Respondent that the Deputy Registrar has no powers, I find it in the interest of justice to Refer the matter before the Judge In Charge for him to look into the appropriateness and legality of the order and Ruling which I made on 21/2/2019 and give directives. This reference is made under order 9 of the Advocates Remunerations Order 2015 2015 GN 264/2015.”

The record could not be placed before the Judge In Charge. It took more than two (2) months from 31/10/2019 when the ruling was delivered, to 10/1/2020 when the applicants complained to the Judge In Charge) for it to reach him. He then ordered the present reference to be opened.

When the reference was called for hearing, Mr. Yusuph Shekh and Lisa Mollel advocates appeared for the applicants while the respondents were represented by Ms. Caroline Kivuyo. Mr. Shekh expressed his dissatisfactions with the order of the Taxing Master and requested the court to make proper direction in the matter. He said that, it was not proper for counsel for the respondent to raise the issue of jurisdiction again once it has been raised and dismissed. He had the view that instead of making a reference, the registrar could just proceed to

decide the application before him on merit.

Ms. Caroline Kivuyo had the view that the Deputy Registrar had power to make the reference under Rule 9 of the Advocates Remuneration Order and section 78 of the Civil Procedure Code Act but joined views with Mr. Shekh that it was not proper to make the reference in the circumstance of the case. She said that the reference was supposed to be made before making the decision. She argued the court to nullify proceedings which happened after 21/2/2019.

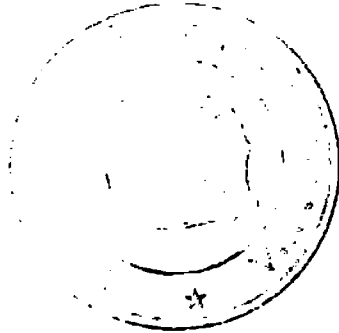
In rejoinder, Mr. Yusuph Shekh had the view that the proceedings had no problems but the ruling which followed. He argued the court to return the file to the Deputy Registrar to compose a ruling.

I had time to consider the matter carefully. Whereas I agree that the Taxing Master had power to make a reference under Rule 9 of the Advocates Remuneration Order 2015, GN 2637 2015, like the counsels, I don't think that the powers were used correctly in this case. I have the view that there was no room for reference once he had ruled out that he had jurisdiction to hear the case. Further to that, Ms. Anthonia Agapiti acted unprofessionally and misled the registrar for reasons which are not clear to me. It is elementary knowledge to any advocate that, once a preliminary objection has been raised, argued and dismissed, it can not be reopened again before the same person. There was no remedy before the registrar. What the aggrieved party could do in such a situation in my view, was to reserve his guns and fire during appeal, if any. Let her be reminded and act properly in future.

That said, the ruling of the Taxing Master dated 31/10/2019 is revised,

vacated and set aside. Let the record be remitted to the Deputy Registrar or his successor in office to compose a ruling basing on the available proceedings and deliver it to the parties. I direct the ruling to be composed and delivered within 14 days from today.

It is ordered so. No order as to costs.

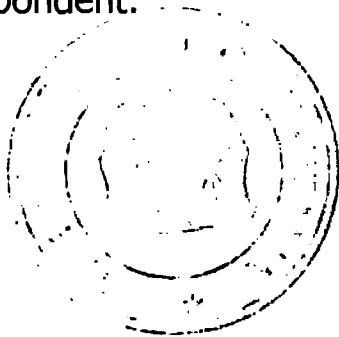


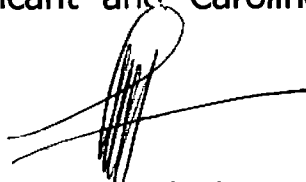

Hon. L. M. Mlacha

Judge

4/3/2019

Court:- Ruling delivered this day of 4/3/2020 in the presence of Grace Majwala Advocate for the Applicant and Caroline Kivuyo Advocate for the Respondent.

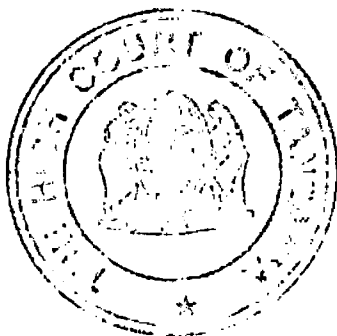



Hon. L. M. Mlacha

Judge

4/3/2019

Right of Appeal Explained.




Hon. L. M. Mlacha

Judge

4/3/2019