

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT COURT  
AT MOSHI  
LAND REFERENCE NO. 01 OF 2019**

(C/f Bill of Costs No. 292 of 2017 District Land and Housing of Moshi)

**LUCAS JOSEPH MIREMI ..... APPLICANT**

**VERSUS**

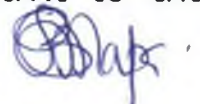
**JOSEPH JOHN MASSAWE ..... RESPONDENT**

*4<sup>th</sup> June 2020 & 3<sup>rd</sup> July 2020*

**RULING**

**MKAPA, J:**

This Ruling relates to a Reference against the ruling and order in **Bill of Cost No. 292 of 2017** delivered on 15<sup>th</sup> November 2018 by Hon. J. Silas, Chairman, District Land and Housing Tribunal of Moshi, (trial tribunal) in his capacity as Taxing Officer wherein he dismissed the application with no orders as to costs. The application is made under **Order 7 (1), (2), (3) and (4) of the Advocates Remuneration Order, 2015** and is supported by applicant's sworn affidavit. The respondent disputed the application and filed a counter affidavit to that effect.

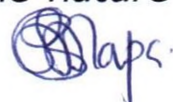


The facts which gave rise to this application is to the effect that, the respondent herein filed **Application No 65 of 2015** before the trial tribunal, claiming against the applicant's border encroachment as neighbors. The trial tribunal dismissed the application with costs. Thereafter the respondent filed Bill of cost No. 292 of 2017 and the same was dismissed for being time barred without costs. Dissatisfied, the applicant herein filed this application challenging the taxing master's decision not to award costs on the dismissed Bill of Cost.

At the hearing, parties agreed to dispose the application by way of filing written submissions. The applicant was represented by Mr. Severin J. Lawena, learned advocate while the respondent was represented by Mr. M. Kilasara also learned advocate.

Arguing in support of the application Mr. Lawena submitted that, Bill of Cost No. 292 of 2017 filed at the trial tribunal was dismissed without cost after the preliminary objection on time limitation was sustained. He argued that in dismissing the application the taxing officer had this to say;

*"I have been reading the statement of preliminary objection in respect to an extension of time and find that, the bill of costs is time barred, therefore I hereby sustain the preliminary objection. Due to the nature*



*of this application I hereby order each party to bear his costs."*

Mr. Lawena argued that the taxing master did not assign reasons for dismissing the Bill of cost without costs. Mr. Luwena contended further that, according to **section 30 (1) of the Civil Procedure Code**, Cap 33, [R.E. 2002] the court when exercising its powers in awarding costs shall do so judiciously. To support his argument, learned counsel cited the decision in the case of **DP Shapriya & Company Limited V. Regional Manager, Tanroads Lindi**, Civil Reference No. 1 of 2018 where the Court of Appeal quoted with authority the case of **Nkaile Tozo V Philimon Musa Mwashilanga** [2002] TLR 276 the fact that;

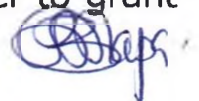
*"...whether or not the first appellate court was entitled to deny the [appellant] his cost will largely depend on the construction of section 30 (1) and (2) of the CPC ... Costs are entirely in the discretion of the court and they are awarded according to the facts and circumstances of each case. Although this discretion is a very wide one, like in all matters in which courts have been invested with discretion, the discretion in denying a party his costs must be exercised judicially and not by caprice ..."*



Mr. Lawena went on submitting that it is mandatory for the court to assign reasons for refusal to award costs. He finally submitted that since the applicant successfully prosecuted his case without any misconduct he is entitled to costs as his right. He therefore he prayed for this application to be allowed with costs.

Contesting the application Mr. Kilasara submitted that, the parties are neighbours and their initial dispute was over an encroachment on their respective borders thus, the trial tribunal did considered such background in not awarding costs. It was Mr. Kilasara's views that awarding costs would have prolonged the existing feud between them hence the taxing officer was justified in his decision. Mr. Kilasara went on arguing that this matter originated from a land dispute thus in terms of **section 51 (2) of the Land Dispute Courts Act, 2002 as amended by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2010**, CPC is not applicable where the regulations made thereunder has relevant applicable provision.

Mr. Kilasara explained further that, **Regulation 21 of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations GN No. 174 of 2003** provides that the Tribunal may make orders to costs in respect of a case as it deems just. That, the word 'MAY' is discretionary therefore the taxing officer was not obliged to give reasons whether to grant



or not to grant costs. It was Mr. Kilasara's view that the cases cited are distinguishable from the matter at hand. He therefore prayed for this application to be dismissed and each party to bear their own costs.

In his brief rejoinder Mr. Lawena maintained his earlier submission in chief that taxing master ought to have given reasons for his refusal to grant the costs.

Having gone through the arguments for and against the Reference, I think the only issue for determination is

*Whether the applicant was prejudiced by the taxing master's decision in dismissing the Bill of costs without awarding costs and not assigning reasons thereof.*

It is trite principle of the law the fact that, awarding costs is a discretion of the taxing master. In the case of **Mbowe V Attilio** Civil Reference 1-D-70; 15/8/70; Georges, C. J had this to say;

*"I would not wish to go so far as to say that a taxing master should state in detail the reasons which led him to come to the conclusion to which he did come...I would prefer, therefore, to state that while it is desirable that taxing master should set out their reasons, the mere fact that they have not done so in cases where instructions fees are being considered should not be considered a fatal error in principle*

*necessitating that the matter be remitted to be taxed afresh ..."*

From the foregoing principle of the law it is plain clear the fact that although the taxing officer has the discretion to give orders as to costs, he is as well required to give reasons for the same. In the matter at hand my view is, he did not act judicially. I hold so because of the following reasons;

**First;** It is on record that the respondent filed the bill of cost application out of time which was successfully challenged by the applicant though a preliminary objection was raised to the effect that, the application was time barred. My perusal of the trial tribunal's record has revealed that the applicant herein did procure an advocate for assisting him in defending his case. He also had incurred costs in attending to his case. Refusing to award him costs without giving any reason did prejudice the applicant since cost has to follow the event. The taxing master had a duty to elaborate on the phrase "***due to the nature of this application***" which resulted into not awarding the costs.

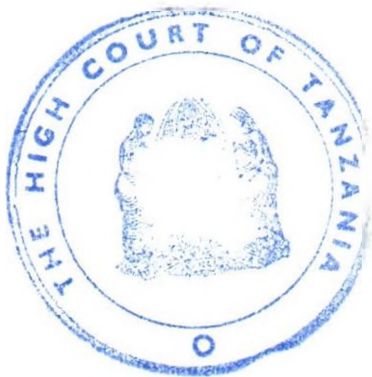
**Secondly,** in his defence the respondent contended the fact that as parties herein are neighbours, the taxing officer considered such relationship in reaching his decision. I find this argument misplaced as nowhere is reflected in taxing master's decision. Regardless, the dismissal of the bill of cost emanated

aps.

from Application No. 65 of 2015 in which the application was dismissed with costs, if being neighbours was a matter of consideration it is my observation that the same should have been considered in the initial application for the sake of fairness to both parties.

For the reasons discussed, I allow the application and order costs to the applicant in respect of the dismissed Bill of Cost Application No. 292 of 2017 with costs. It is so ordered.

Dated and delivered at Moshi this 3<sup>rd</sup> Day of July, 2020



A handwritten signature in blue ink, appearing to read "S. B. Mkapa".

**S. B. MKAPA**

**JUDGE**

**03/07/2020**

