

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISRTY  
AT MOSHI**

**LAND REFERENCE NO. 2 OF 2019**

(C/F Bill of Cost No. 289 of 2017 Originating from Misc. Application No. 190 of 2016  
District Land and Housing Tribunal for Moshi at Moshi)

**NEMES NGOWI ..... APPLICANT**

**VERSUS**

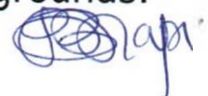
**JULIANA MARTIN ..... RESPONDENT**

*24<sup>th</sup> June, 2020 & 7<sup>th</sup> August, 2020*

**RULING**

**MKAPA, J:**

This Ruling relates to application for reference in respect of a Ruling in **Bill of Cost No. 289 of 2017** by Taxing Master, Chairman of the District Land and Housing Tribunal of Moshi (trial tribunal). Aggrieved by the ruling, the applicant preferred this reference by way of chamber summons supported by an affidavit sworn by the applicant under **Order 7 (1) (2) and (3) of the Advocates Remuneration Order, 2015** GN 264/2015 (Remuneration Order). inwhich the applicant has raised the following grounds:-



1. That, the decision of the taxing master/chairman in Bill of cost No. 289/2017 originating from Misc. Application No. 190/2016 of the Moshi District Land and Housing Tribunal be quashed and set aside for;
  - i. Disregarding the two point of preliminary objection raised by the applicant before the District Land and Housing Tribunal.
  - ii. Not assigning reasons to the award of costs to the respondent amounting shilling four hundred and thirty five Shillings (435,000 /=)

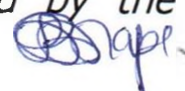
Parties consented that the application be argued by way of filing written submissions. The applicant was represented by Mr. Faustin Materu, learned advocate while the respondent was represented by Mr. Emmanuel Karia also learned advocate.

Arguing in support of the first ground Mr. Materu submitted that, at the trial tribunal the applicant had raised two objections on point of law to the effect that the bill of cost filed deserved to be dismissed for not being accompanied by a copy of judgment and order or ruling and order as required by **Order 58 (2) of the Remuneration Order** and the second objection was to the effect that, the bill of cost filed contravened the requirements of **Order 4 of the Remuneration Order** which requires taxation

application by filing a bill of cost be launched 60 days from the date of the order awarding costs. It was Mr. Materu's argument that the record reveals that, the application was not accompanied by a copy of judgment and order of the tribunal which granted cost to the respondent. Mr Materu went on explaining that, the order of cost was passed on 13/9/2017 and bill of cost was filed on 19/12/2017 while the time limited had lapsed on 13/11/2017 hence the application was delayed for 36 days without applying for extension of time.

It was Mr. Materu's further contention that, the taxing master delivered a ruling which did not address the objection raised while the same deserved to be dismissed for being incompetent and time barred. Furthering his argument Mr. Materu submitted that, the taxing master awarded the respondent costs amounting Shillings. 435,000/= being costs incurred during entertainment in Misc. Application **No. 190 of 2016** without assigning reasons on the same. To support his argument Mr. Materu cited the case of **Iddi Nzimano V National Bank of Commerce** [2002] TLS 412 where the court held that:-


*"Taxation of costs is the system of scrutinizing of bill of costs. The powers of the court in taxation of cost is threefold: first is the power conferred by the*



*statute, the statutory jurisdiction now contained in the Advocate's Remuneration and Taxation of Costs Rules 1991 (GN No. 515 of 1991). Secondly, the power to deal with advocates' bills of cost under its inherent jurisdiction over advocates as officers of the court; and thirdly, the normal jurisdiction of the court in dealing with contested claims...."*

He finally prayed that this application be allowed with costs.

Disputing the application, On the 1<sup>st</sup> ground Mr. Karia argued that, the objection raised were properly decided by the trial tribunal. On time limitation, he explained that the respondent filled the application on 10/11/2017 and payment for filing were effected on 13/11/2017 through exchequer Receipt No. 99000632507 issued on 27/11/2017. Mr Karia contended that for the reasons best known to the tribunal clerk, the admission was signed on 19/12/2017, while the application was filed timely. To support his contention Mr. Karia cited decision in the case of **Adamson Mkondya and Another V Angelika Kokutona Wanga**, Misc. Land Application No. 521/2018, HC Mwanza (unreported) where it was held that, "*the date of the receipt of the court fees is the date of filing*".



On the 2<sup>nd</sup> ground as to whether the awarded amount of Tshs 435,000/= was justified by the taxing master, It was Mr. Karia arguments that both parties argued for and against the initial amount of Shillings 734,000/= but at the end the taxing master awarded Shillings 435,000/=. Therefore the amount awarded was justified. He finally prayed for the application to be dismissed with costs. There was no rejoinder.

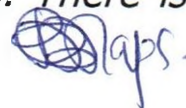
Having considered both arguments for and against the application I think issues for determination are:-

- i. Whether the objections raised were determined.
- ii. Whether the non-assigned of reasons on the cost awarded did prejudice the appellant.

On the first issue, I have had the opportunity of perusing the trial tribunal's proceeding and at page 6 and the following has been revealed:-

***"RULING***

*The Applicant filed the Bill of Cost within Time and thus the Objection is hereby overruled. There is no order as to cost.*

aps.

*It is so ordered*



*Sgd: Silas – Chairman*

*19/11/2018”*

Therefrom the application for bill of costs was heard on merit. Thus my conclusion is the objection raised was decided. The applicant had submitted that two objections were raised , however, records of the typed proceedings had revealed that, only one point of objection was raised. Despite the fact that the tribunal’s typed proceedings had revealed the objection was decided one has to ask as to whether such ruling was properly founded. The law requires that any judicial decision of a court including (tribunal) to comprise brief facts of the case, issues to be determined, decision and reasons for the decision. It is plain clear the above reproduced tribunal ruling did not comply with the legal requirement. The trial tribunal just pronounced the decision without assigning reasons thereof on how the Tribunal had reached the said decision. Therefore I am satisfied that the trial tribunal’s decision lacks justification.

Regarding the 2nd ground, relating to the ruling on **Bill of Cost No. 289 of 2017** the ruling reads;

**"RULING**

**BEFORE: J. SILLAS – CHAIRMAN**



*I have the submission of the parties and find that the applicant is entitled or deserve to be paid 435,000/= as the cost incurred during the entertainment of Misc. Application No. 190 of 2016.*

*It is so ordered*

*Sgd: Silas – Chairman*

*19/11/2018”*

I find this ruling legally incompetent and indeed did prejudice the applicant because the respondent prayed for Shillings. 734,000/= but was awarded Shillings 435,000/=. Justice demands that the applicant is entitled to a reason on how taxing master did arrive at awarding shillings 435,000/=. 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 authority, it is undisputed the fact that, the taxing officer has discretionary powers while giving orders as to costs, but on the other hand the same has to be exercised judiciously . Like in the case at hand justice demands that the taxing master ought to have given reasons for the adjustment from Shillings 734,000/= to shillings 435,000/= thus, in my view did prejudice the appellant as the appellant might have incurred costs to the same amount of Shillings 734,000/= which had been adjusted. Therefore the taxing master cannot be said to have acted judiciously.

In the circumstances, I remit the application back to the taxing master to be taxed afresh. Further, In doing so the taxing master is ordered to;

- a. Determine the preliminary objection raised thoroughly and assign reasons thereof;
- b. Determine how much he has taxed in each items 1-7;
- c. Thoroughly tax item 8 on fees of stationaries;
- d. Declare disbursement fees to be paid as prayed in item 10-11;
- e. Thoroughly tax item 13 on court broker fees;





f. Costs for bill of cost application be properly identified;

It is so ordered.

Dated and delivered at Moshi this 7<sup>th</sup> day of August, 2020.



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

**S.B.MKAPA**

**JUDGE**

**07/08/2020**