

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF MBEYA
AT MBEYA
CIVIL REFERENCE NO. 2 OF 2018.

(Arising from the Bill of Costs No. 14 of 2017, in the High Court of Tanzania, at Mbeya).

ELIFA MWAMTOBEAPPLICANT

VERSUS

1. MAWAZO CHAULA.....1ST RESPONDENT
2. JASSON SWILA.....2ND RESPONDENT
3. WELOD NZOWA.....3RD RESPONDENT

RULING

08/07 & 08/10/2020.

UTAMWA, J:

This is a ruling on a preliminary objection (PO) raised by the respondents, MAWAZO CHAULA, JASSON SWILA and WELOD NZOWA. In this matter, the applicant, ELIFA MWAMTOBE made a reference to a Judge of this same court against a ruling (the impugned ruling) of a Taxing Officer of this court. The reference was preferred under Order 7 of the Advocates Remuneration Order, 2015, GN. No. 264 of 2015 (the ARO). It

was made by way of chamber summons supported by an affidavit sworn by the applicant herself.

The respondent raised a preliminary objection based on the following five limbs:

1. That, the present application is totally incompetent as it has been brought under the non-existent provision of the non-existent law thus the court is not properly moves.
2. That, the application is in violation of the provisions of order 7(3) of the ARO.
3. That the *jurat* of attestation of the applicant's affidavit is incurably defective for being in violation of the provisions of section 10 of the Oaths (Judicial Proceedings) and Statutory Declaration Act (Cap.34 R.E. 2002).
4. That, the supporting affidavit is fatally defective for containing argumentative matters and legal issues, thus, in violation of Order XIX, Rule 3(1) of the Civil Procedure Code (Cap 33, R.E. 202).
5. That, the supporting affidavit is materially defective for failure to disclose grounds upon which the application is premised.

I will firstly consider the fifth limb of the PO. In case I will overrule it, I will also consider the rest of the limbs. However, in case I will uphold the said fifth limb of the PO, I will make necessary orders according to law. This adjudicating plan is based on the ground that, this seems to be a strong limb of the PO which, if upheld, will be capable of disposing of the entire

matter. The issue under this heading is therefore, *whether or not the affidavit is defective for failure to disclose grounds upon which the application is premised.*

In his written submissions supporting this limb of the PO, Mr. Ignus Ngumbi, learned counsel for the respondents contended that, the applicant ought to have shown in the affidavit her aggravation from the decision of the taxing officer. However, she did not do so. Instead, she embodied facts into paragraphs 3 and 4 of the affidavit as if this was an application for leave to appeal to the Court of Appeal of Tanzania (the CAT) or for a certificate of point of law. In her replying written submissions, the applicant who was not represented, did not make specific arguments on this aspect. She generally contended that, under the principle of overriding objective, this court is required to consider this matter on merits and should not be overwhelmed by procedural technicalities.

I have considered the record, the arguments by the parties and the law. The affidavit supporting the application generally states that, the applicant was respondent in the Taxation Cause No. 14 of 2017 in this court. The Taxation arose from a Judgment made by Honourable Judge Mtaki. In fact, Mtaki was not a judge of this court, but a Resident Magistrate with Extended Jurisdiction (RMEJ). It is thus, taken that the judgment which led to the taxation cause was made by Mtaki RMEJ.

The applicant's affidavit further shows that, she was aggrieved by the judgment of Mtaki RMEJ and intends to appeal against it to the CAT. She wants the CAT to consider the following three issues: whether the

respondent had *locus standi* to sue, whether a wrong doer can benefit from his wrongs and whether the bill taxed against the appellant is justified under the circumstances of the case.

Now, from the affidavit, it is clear, as rightly contended by the learned counsel for the respondents, that, the applicant did not mention any ground for this reference. In other words, she did not indicate as to how the ruling of the Taxing Master had aggrieved him. In fact, what she did the most, was to show that she was aggrieved by the judgment of Mtaki RMEJ and intended to appeal to the CAT. In my view therefore, the affidavit is defective. This is because, according to its wording, Order 7 (1) and (2) of the ARO, guides that, any person aggrieved by a decision of the Taxing Officer may file a reference. The reference is made by a chamber application supported with an affidavit. A party making a reference must thus, show in the affidavit that he/she was aggrieved by the decision of the taxing master. He/she must also disclose the grounds of the grievances in the affidavit. In the matter at hand, the applicant did not do both. She did not indicate that she was aggrieved by the ruling of the taxing master. What she showed, was only that she was aggrieved by the Judgment of the RMEJ from which the taxation cause at issue arose. Again, she did not mention a single ground of the grievances against the ruling of the taxation master.

The appellant also tried to hide her blunder under the umbrella of the principle of overriding objective. Indeed, I am also live of the emphasis brought into our law by the principle of overriding objective. It essentially requires courts to deal with cases justly, to have regard to substantive

justice and avoid overreliance on procedural technicalities; see the decision by the CAT in the case of **Yakobo Magoiga Giche re v. Peninah Yusuph, Civil Appeal No. 55 of 2017, Court of Appeal of Tanzania (CAT), at Mwanza** (unreported). Nonetheless, this principle does not create a shelter for each and every breach of the law on procedure. This is the envisaging that was recently demonstrated by the CAT in the case of **Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha** (unreported). In that case, the CAT declined to apply the principle of Overriding Objective amid a breach of an important rule of procedure.

It follows thus, that, the appellant in the case at hand, cannot hide herself under the umbrella of the principle of overriding objective for her violation of the procedure as demonstrated above. It is more so considering the fact that, the application is apparently a result of a serious misconception of the law. Probably, this was due to the fact that the applicant is an unrepresented laywoman. However, this is not a good defence for the blunder she committed.

Certainly, if this court entertains the application at issue, it will face serious difficulties in deciding it since no ground of grievances is mentioned in the affidavit. It is for this reason that, I find the affidavit at issue incurably defective and cannot support the application as required by the law cited above. I consequently answer the issue posed above affirmatively that, the affidavit was defective for failure to disclose the grounds upon which the application is premised.

Owing to the findings made above, the application is liable to be struck out for being incompetent. This finding thus, makes it unnecessary to consider the rest of the grounds of the PO since it is capable of disposing of the entire application. I accordingly uphold the PO for the above discussed limb only, and I strike out the application with costs since the general rule on costs is that, costs follow the event. It is so ordered.



J.H.K. UTAMWA
JUDGE
08/10/2020.

08/10/2020.

CORAM; Hon. JHK. Utamwa, J.

Applicant: Absent.

Respondents: present No. 3 only.

BC; Mr. Patrick, RMA.

Court: Ruling delivered in the presence of the third respondent, in court this 8th October, 2020. Other parties be notified of the ruling.

JHK. UTAMWA.
JUDGE
08/10/2020.