

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

REFERENCE No. 04 OF 2019

(From Bill of Costs No 12 of 2018)

NDIYO UNITED COMPANY LIMITED..... 1ST APPLICANT

MARINA KAHEMELE NYASHALU.....2ND APPLICANT
VERSUS

IRENE SIMON KAHEMELE RESPONDENT

RULING

Date of last Order: 18/08/2020

Date of Ruling: 15/10/2020

Dr. A. J. Mambi, J.

This is a ruling on the reference made by the applicants challenging the decision of the taxing Master who awarded the respondent the bill of cost at the tune of Tshs. **20, 750,000/.** The applicant filed his application under Order 7(1) of the Advocates Order, 2015 GN.No.264/205 supported by affidavit. He has prayed this court to reverse the decision of the Taxing Master dated 24/09/2019.

It appears from the records that the applicant had earlier filed his bill of costs at tshs.46, 760,000/= against the respondents. However, the Taxing Master reduced that amount (46, 760,000/=) to 20, 750,000/-. The applicants were aggrieved by the decision of the Taxing Master and made reference to this court to reverse the decision of the Taxing Master.

During hearing, the applicants were represented by Mr. Alex Mgongolwa in collaboration with, the learned Counsels from BK MWABUKUSI & CHAMBERS ADVOCATES, while the respondent appeared under the service of Mr. Mbise, the learned Counsel. The applicants Counsels briefly submitted that the Taxing Master unreasonably awarded the bill of tax to the respondent. The learned Counsel Mr. Mgongolwa for the applicants was of the view that since the matter ended at the preliminary stage, there was any complexity and much costs that could have been incurred by the respondent. He referred the decision of the Court in ***NBC LTD vs MM Worldwide & Two Others Misc Cause No.217 of 2015.***

In response, the respondent Counsel Mr. Mbise briefly submitted that the claim by the applicants have no merit since the Taxing Master made his decision with reasons. He argued that the chamber summons by the applicant has not been filed in compliance with the provisions of the law. He argued that that chamber summons cannot be supported by an affidavit since the orders sought by the applicants is not indicted under the application. Mr. Mbise argued that the amount of bill of tax

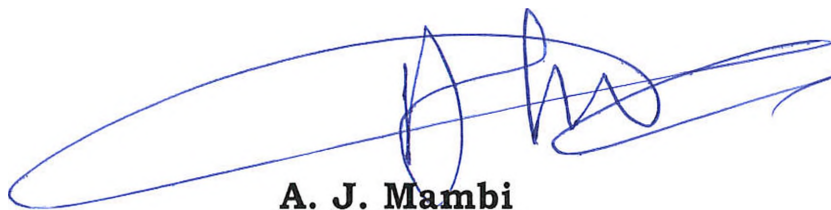
claimed by the respondent was proved and that amount was actually less than what they had claimed earlier

I have carefully gone through the reference made by the applicants in line with submission made by both parties. I have also keenly gone through the submission from both parties and the Ruling of the Taxing Master. In my observation and considered view, the main issue at hand is whether this application Master was wrong or not. I will not dwell much on the issue as to whether the applicant was right in filling their application since the applicants have properly moved this court by filing their reference in line with the provisions of the law. With regard to the issue as to whether the taxing master was right in the amount he awarded the bill of cost, I wish to highly that an award of bill of cost is the discretion of the court after having been satisfied with the way the applicant has made the calculation and justified his or her costs. It is on the records that, the respondent had earlier claimed the bill of cost against the applicants at the tune of tshs.46, 760,000/=. However the Taxing Master reduced that amount and awarded the respondent the amount of **20, 750,000/=**. The question before this court is that; was amount of 20, 750,000/= justifiable?. My perusal from the records indicate that the respondent was entitled to the bill of costs. However, in my considered view the amount (**20, 750,000/=**.) awarded by the Taxing Master was manifestly excessive which warrants interference of this court inevitable. In my view, the Taxing Master was required to consider the nature of the

case and the stage at which the matter was filed to determine the actual amount that the applicant would be entitled. This court has power to make reference on the decision of the taxing Master and make any appropriate order. Basing on the records from the file and the circumstance of the matter I find proper order the respondent to be paid **15, 750,000/-** as bill of costs instead of **20, 750,000/=** that was earlier awarded by the Taxing Master.

In the circumstance and from the reasons stated above I have no reason to fault with the decision of the Taxing Master rather than upholding his decision save for the amount of Bill of Costs that I have substituted, thus applicants shall pay the respondent Tshs. **15,750,000/- (fifteen Million Seven hundred Fifty)** as bill of costs instead of Tshs. **20, 750,000/=**.

In the event as I reasoned above, the reference by the applicants is partly granted to the extent I have stated. I make no orders as to costs. Each party to bear its own costs.

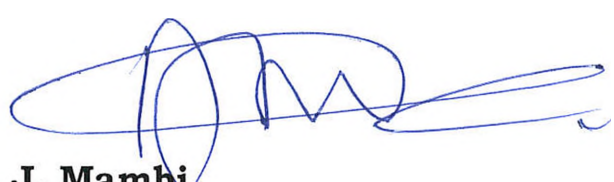


A. J. Mambi

Judge


15.10. 2020

Ruling delivered in Chambers this 15th day of October, 2020 in presence of both parties.



A. J. Mambi
Judge
15.10. 2020

Right of appeal explained.



A. J. Mambi
Judge
15.10. 2020