

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
REFERENCE NO. 03 OF 2019

(Original, Taxation Cause No. 20 of 2017, at Resident Magistrates' Court of Arusha)

SANGITO TEREVAEL KYUNGAI.....APPLICANT

VERSUS

JUDICA NSANYA PALLANGYO.....RESPONDENT

RULING

25/09/2020 & 17/11/2020

GWAE, J

This ruling is prompted by a preliminary objection raised by the respondent herein above, claiming that the applicant's application for reference is time barred.

Before this court, the applicant filed an application for reference under Rule 7 (1) & (2) of the Advocate Remuneration Order, G.N. No 264 of 2015 challenging the decision of a Taxation officer. The applicant's application is supported by his sworn affidavit. The respondent in opposing the applicant's application raised a Preliminary Objection on a point of law that the application is time barred and also the application is incurably defective for being annexed with defective affidavit.

Hearing of a P.O proceeded orally and the parties appeared in person, unrepresented. Supporting the preliminary objection, the respondent submitted only on the first limb of Preliminary Objection that the application is time barred where he stated that the application before this court has been filed two years after the delivery of the decision. The respondent further added that the applicant was present when the decision subject of this application was delivered, he therefore prayed for the dismissal of the application

The applicant on the other hand admitted to have filed his application out of time however he contended that he was not aware of the decision by the taxation officer in taxation cause no 20 of 2017 until when he appeared before Hon. Mwakatobe on 30/04/2019.

The respondent in rejoinder submitted that the applicant was aware of the decision as he was present throughout the trial court's sessions.

Initially, the applicant filed a civil case no. 112 of 2016 in the Resident Magistrate Court of Arusha against the respondent which was subsequently struck out with costs for failure by the applicant to amend his plaint as ordered by the trial court. Following this order, the respondent herein filed a taxation cause no. 20 of 2017, and according to the records the taxation officer who presided the matter was Hon. Jasmin sitting as Acting RM i/c. The records further reveal that on 24/04/2018 the taxation officer gave an order for ruling to be on 15/05/2018, subsequently, on 10/07/2018 the records show that ruling

was delivered by Hon. Mwakatobe RMI/c. The ruling by Jasmin was to the effect that the bill of cost was taxed in favour of the decree holder (respondent herein) is to the tune of Tshs. 3,480,000/=. However, when reading the typed copy of the ruling the last page appeared to have been signed by the taxation officer, Hon. Jasmin on 10/07/2017 while the original records show that the said ruling was delivered on 10/07/2018. My strong belief lies on the records of the court in particular the hand writing, nevertheless the records are to the effect that the taxation cause no. 20 of 2017 was filed on 18/10/2017 therefore it is by any means that the ruling could not have been delivered before the filing of the case taking into account of the filing date and last order made by the taxation office (24/04/2018)

I am of the considered view that the date on the typed copy of the ruling was nothing but a typing error which might have slipped in the eyes of the Hon. Taxation officer when typing. Therefore, since the records are very clear and certain I hereby invoke my revisionary powers under section 44 (1) of the Magistrate Courts' Act Cap 11 R.E. 2019 and proceed to correct the error appearing on the date of delivery of the ruling and order the same to read 10/07/2018.

After the delivery of the ruling on 10/07/2018 by Hon Mwakatobe –SRM an application for execution was filed and successfully determined in favour of the decree holder (respondent herein) whose decision was delivered on 30/04/2019

and I think it is at this juncture where the applicant is mixing up issues to the order of taxation officer and to an order made in the application for enforcement of the respondent decree. I say so simply because he sought revision of the decision of the taxation officer in the taxation cause but he wrongly cited date of delivery of execution order (30/4/2019) whereas the contents of the application reflected in the applicant's affidavit constitute the applicant's dissatisfaction of the decision of the taxation officer

In reality, the applicant is actually challenging the award in taxation cause no. 20 of 2017 delivered by Hon. Jasmin on 10/7/2018 and not as how the applicant has stated in his chamber summons. The applicant ought to have followed the records properly. It should be noted that from the records the taxation officer in this matter which is the subject of this application was Hon. Jasmin and not Hon. Mwakatobe, save for the reading of the ruling only. The ruling delivered by Hon. Mwakatobe was different and was in fact in respect of an application for execution which she heard and delivered the ruling on 30/04/2019.

That being the case, the subject matter of this application is originally from Taxation Cause No. 20 of 2017 whose ruling was delivered on 10/07/2018 and this application for reference has been filed before this court on 3/05/2019 which is far beyond what Rule 7 (2) of the Advocates Remuneration Order G.N. 263 of 2015 provides. According to this rule any party aggrieved by the decision of the


taxing master may file an application for reference to a judge of the High Court within 21 days from the date of the decision.

If I were to consider as alleged by the applicant that he was not present when the ruling was delivered by Mwakatobe-RM i/c on 10/07/2018 yet the applicant had been able to appear on 6/9/2018, 02/10/2018, 17/10/2018, 14/11/2018. 22/11/2018. 3/12/2018, 19/12/2018, 28/01/2019, 5/2/2019 AND 21/2019. Hence the assertion that he was not aware of the ruling on taxation cause is nothing but an afterthought.

Accordingly, the preliminary objection raised by the respondent on limitation of time is sustained, the applicant's application is time barred and is hereby struck out with costs.

It is ordered.




M. R. GWAE
JUDGE
17/11/2020