

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL REFERENCE NO.12 OF 2018

(Reference from Bill of Costs No. 1 of 2016 Kinondoni District Court arising from
Manzese Primary Court Madai No. 48 of 2003 and Civil Appeal No. 70 of 2003)

ALLY NGUMBA.....APPLICANT

VERSUS

JACKSON KAYANDA.....RESPONDENT

RULING

30th November and 8th December 2020

MASABO, J

This is a reference from the decision of Moshi SRM, Taxing Master in Bill of Costs No. 1 of 2016 before the district court for Kinondoni in which the applicant was taxed a bill of Tshs 850,000/= . Being disgruntled the applicant has moved this court under Order 7 (1) the Advocates Remuneration Order, 2015.

In the application which is supported by an affidavit deponed by applicant he has raised two grievances. First, the application for bill of costs was lodged out of time and that, having raised the preliminary objection that the application was time barred, the Tax Master overruled it and proceeded to determine the application although it was time barred. The second grievance is that the Tax Master erred in taxing him on dates other the dates to which

the parties appeared before court. The application was contested by the respondent.

When the application was called for hearing, both parties appeared unrepresented. Although lay and senior citizens, each tried his best to state his case. Submitting on the first grievance, the applicant argued that the matter between them was concluded on 1 July 2004 after which the applicant never instituted an application for bill of costs until 2016 when more than 10 years had lapsed. He argued that, since the matter was hopelessly time barred, the respondent ought to have sought an extension of time but he did not. He lamented further that although he raised this issue in the form of a preliminary objection, the Tax Master unfairly dismissed his objection.

On the second grievance he argued that the Bill taxed was material defective in that, the appeal giving rise to the Bill of Cost was determined on 1st July 2004 but the Bill for costs included dates during which the appeal had already been determined. Such dates, he argued, include 7th July 2004 and 13th May 2005. In view of this, he argued that the bill was unfair as the parties were not appearing in court on the material dates as the appeal had been finally determined.

On his part the respondent lamented that the applicant is a busy body who is determined to abuse the court processes to prevent the respondent from enjoying his decretal rights. He argued that the parties have been roaming

around the court corridors for 24 years litigating on the same matter because the applicant has been filing multiple applications in the district court and in this court such that, in this registry there are more than three applications.

Curious about the validity or otherwise of the respondent's lamentations, I called upon the case files of the 'many cases' allegedly filed by the applicant in abuse of court processes so as to satisfy myself of these assertions and to prevent the risk of making a decision *functus officio* on matters that had already been decided by my learned sisters and brothers in the bench. Three files were brought. The first was in respect of **Misc. Civil Application No. 202 of 2017** before **Arufan, J.** In this application the applicant obtained leave for extension of time to file a reference in respect of Bill of Costs No. 1 of 2016. The instant reference is an off spring of this application.

The second was the case file for **Misc. Civil Application No. 828**. In this matter which was decided by **De-Mello, J**, the applicant was seeking an extension of time to file a reference against by Masam DR Tax Master in Misc. Civil Application No. 132 of 2017. The application ended barren as it was dismissed for lack of merit.

The third, **Misc Civil Application No. 258 of 2019** also before **De-Mello, J**, was seeking stay of execution pending determination of Misc. Civil Application No. 828 of 2018 (the second application). This too was dismissed and costs was awarded to the respondent. To this extent, it is certain in my mind that although there are multiple interwoven applications, each of the

applications is for a distinct order. Thus, I rest assured against the danger of determining the application *functus officio*.

With this finding I now revert to the application at hand. There are basically two issues for determination. The first is whether the application was time barred and the second is whether the Bill was fairly taxed.

Regarding the first issue, order 4 of Advocates Remuneration Order, 2015. the provides that:

"A decree holder may, within sixty days from the date of an order awarding costs, lodge an application for taxation by filing a bill of costs prepared in a manner provided for under Order 55."

Section 53.-(1) of the Interpretation of Laws Act, [Cap 1 RE 2019]

state that:

Where in a written law the word "may" is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not, at discretion.

While mindful of the fact that the matter giving rise to the contested bill of cost was conducted and concluded before the Advocates Remuneration Order, 2015 GN No 264 of 2015 came into being, I have consulted the authorities to ascertain the position prior to 2015. In my research, it came to light that the law in place at the material time had no specific time limit. In further research on the position applicable in similar situations where no time limit is provided the decision of the Court of Appeal **in BOT v Said A.**

Marinda & 30 others Civil Reference No. 3 of 2014, came to my rescue. In this case, it was held that *where there is no specific time scale imposed in any application, the 60 days should come in aid to fill the lacuna.* Going by this authority, as the matter between the parties was concluded on or after 1st July 2004, the application ought to have been filed on or before 1st September, 2016. Certainly, by filing the application in 2016, the applicant was hopelessly out of time.

Whereas this is offensive of the law, undeniably, during all this period the parties were busy in court in pursuit of applications incidental to Madai No. 48 of 2003 and Civil Appeal No. 70 of 2003. The situation between the parties herein is not one where after winning the case the decree holder went home and slept over his right. In my firm view, the fact that the parties were constantly busy in court might have certainly confused the lay applicant as to the requirement to apply for the bill of costs. His lay mind coupled with the fact that the time within which to file the application for bill of costs was not specifically provided for under the law at the material time, might have acted as exacerbating factor and entitles him the benefit of doubt.

Based on the aforesaid and having considered the circumstances of this application, I have come to the conclusion that, although in ordinary circumstances I would condemn the respondent, the broader sense of justice dictates that the applicant be excused. Accordingly, the first ground fails.

Regarding the second issue, I am of the considered view that the point raised by the applicant is meritorious. The parties and the court records consistently demonstrate that the appeal was decided on 1/7/2004. According to page 3 of the judgement, having allowed the appeal the court ordered costs for the appellant. Certainly, the costs covered here are those which was incurred on or before 1/7/2004. It was therefore expected that the bill of costs would only be confined to these costs. However, as it is demonstrated in the affidavit the costs charged surpassed the date of judgment. There are costs for September, 2004, October 2004, November 2004, and costs for 2005. Granted, this was contrary to the law and practice pertaining to taxation.

To the extent above stated, the reference partly succeeds. Considering that the matter has been in court for a very long time, it is ordered that the case file be expeditiously returned to the Tax master who is directed to exclude all the items past 1st July 2004.

I will order no costs

DATED at Dar es Salaam this 8th day of December, 2020.




J. L. MASABO
JUDGE