

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

CIVIL REFERENCE No. 2 OF 2019

(Arising from the High Court (Bukoba District Registry) in Taxation Cause No. 6 of 2018 & Probate & Administration Appeal No. 1 of 2016; the District Court of Muleba at Muleba in Probate & Administration Appeal No. 13 of 2014; and Kashasha Primary in Court Probate Cause No. 10 of 2014)

MUSWADIKU PASTORY ----- APPLICANT

Versus

RAYMOND PASTORY ----- RESPONDENT

RULING

03/03/2021 & 15/03/2021

Mtulya, J.:

Muswadiku Pastory (the Applicant) and Raymond Pastory (the Respondent) are relatives from the same father, Mzee Pastory Budomi (the deceased) who had expired on 24th February 2007. Following demise of the deceased, on 12th May 2014, the second oldest son, the Respondent applied for letter of administration in **Kashasha Primary Court** (the Primary Court) in **Probate Cause No. 10 of 2014** to administer deceased's estates located at Buyera within Buyaga Village.

The reasoning of the Respondent was based on a Will drafted on 16th January 2000 by the deceased accompanied by minutes of clan meeting. However, the application was protested by the Applicant arguing that some of the deceased's estates mentioned in the Will were

already distributed to the deceased's sons before the Will was drafted. After a full hearing of the case, the Primary Court decided in favour of the Respondent with costs borne by the Applicant. The Applicant was not satisfied hence preferred an appeal before the **District Court of Muleba at Muleba** (the District Court) in **Probate & Administration Appeal No. 13 of 2014** and his appeal was dismissed. Still dissatisfied with the judgment of the District Court, the Applicant filed **Probate & Administration Appeal No. 1 of 2016** in this court and was also dismissed with costs to the Applicant.

Following the decision of this court, on 29th May 2018 the Respondent filed **Taxation Cause No. 6 of 2018** (the case) in this court claiming a total of Tanzanian Shillings Two Million Two Hundred Seventy Six Thousand Nine Hundred Ninety Only (2,276, 990/=) as costs of prosecuting the case from the Primary Court to this court. After hearing of the case, learned Taxing Master on 28th February 2019 ruled the Applicant to pay the Respondent Tanzanian Shillings One Million Seventy Six Thousand Only (1,076,000/=). However, the Applicant was not satisfied with the decision hence preferred the present **Reference registered No. 2 of 2019** in this court contending that the decision was tainted with illegality and that some of the receipts were forged. In his Reference, the Applicant attached **Uthibitisho wa Njia ya Gari T.965**

unless there are good reasons. Her reasoning aligned with the directives of our superior court in the precedent of **C.B. Ndege v. O. Aliya & Attorney General** [1988] TLR 91. For purpose of clarity, I will quote, in lengthy, the statements from the decision.

*The law on this aspect... and going by the law and the facts before me, I would answer by simply saying this: that much as I agree that a fairly amount of time, energy, industry etc. were spent by counsel but the 250,000/= is certainly not commensurate with all that effort. To my mind the sum is on the high side. I say so fully conscious of the fact that in view of the fund of the respondents ...that sum could easily be paid. The idea however is to allow such sum as would be reasonable in the particular circumstances and not necessarily tying oneself to the fund of a person. In my view a sum of 125,000/= would be reasonable and just in the circumstances...On the issue of Disbursements and with particular reference to the present application, the reasoning obtaining in **Mulla's Code of Civil Procedure 13th Edition Vol. I and at page 152 Para 7** is to a certain extent relevant for my purposes.*

*In the said paragraph Mulla states: everything which increases the litigation and the costs and which places on the defendant a burden which he ought not to bear in the litigation is a perfectly good cause for depriving the plaintiff of costs. **A successful party will be deprived of the costs of issues which he has unnecessarily raised.***

(Emphasis supplied).

On my part I think, since 2014 when the Respondent initiated the **Probate Cause No. 10 of 2014** in the Primary Court and was summoned in two (2) appeals before the District Court and this court, he incurred costs in terms of court fee, transport fares, food and attendances of himself and his witnesses in the Primary Court. Today is six (6) years since the dispute arose and the Applicant is contesting payment of Tanzanian Shillings One Million Seventy Six Thousand Only (1,076,000/=). I think, the Respondent's Bill of Cost was correctly assessed by the Taxing Master and I will not adjust her decision.

I understand the Applicant had attached **Uthibitisho wa Njia ya Gari T.965 CKJ** drafted on SUMATRA Bukoba on 28th February 2019 and **Taarifa ya Risiti Zilizotolewa na Ndugu Raymond Pastory** prepared by

Naftary Felix on 6th March 2019. However, the attachments were not produced during the hearing of the Taxation Cause. The new facts and evidences in this Reference cannot be entertained as they were not part in the proceedings before the Taxing Master. In the conclusion, the Respondent's Bill of Costs is taxed at Tanzanian Shillings One Million Seventy Six Thousand Only (1,076,000/=). The usual consequences of costs in this Reference to be borne by the Applicant.

It is so ordered.

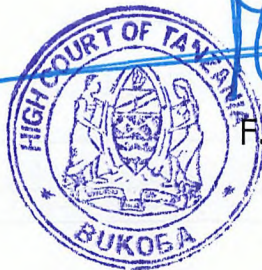


F.H. Mtulya

Judge

15.03.2021

This Ruling was delivered in chambers under the seal of this court in the presence of the Applicant, Mr. Muswadiku Pastory and in the presence of Respondent, Mr. Raymond Pastory.



F.H. Mtulya

Judge

15.03.2021