

**IN THE HIGH COURT OF TANZANIA**  
**(IN THE DISTRICT REGISTRY)**  
**AT MWANZA**

**HC: REFERENCE NO. 08 OF 2020**

(Arising from Misc. Application No.7 of 2020 of the District Land and  
Housing Tribunal for Chato, Originated from Land Application No. 17 of 2019)

**RESPICIUS MATUNGWA BAMWENZAKI ..... APPLICANT**

**VERSUS**

- 1. BIHARAMULO WOMEN SACCOS**
- 2. RUGUMBA JOSEPH**
- 3. ST. SEVERINE & PRIMARY SCHOOL**

} ..... **RESPONDENTS**

**RULING**

*Date of last Order:: 18.05.2021*

*Date of Ruling: 25.05.2021*

**A.Z.MGEYEKWA, J**

The applicant in this reference was aggrieved by the decision of District  
Land and Housing Tribunal. The application is made under Order 7 (1), (2),

and (3) of the Advocates Remuneration Order GN.264 of 2015. The application was supported by an affidavit deposed by Geistida Makoba, learned counsel for the applicant

The applicant prays this court to make a reference to the decision of the District Land and Housing Tribunal which was delivered on 21<sup>st</sup> April, 2020 which awarded the respondent a total sum of Tshs. 1,428,000/=. The applicant prays for the following orders:-

- 1. That, this Honourable court be pleased to make reference on the decision of Hon. Colex, B Chairman which was delivered on 21<sup>st</sup> April 2020 in Misc. application No. 7 of 2020.*
- 2. That, this Honourable court finds that the claim under the presented bill of cost in Misc. Application No. 7 of 2020 was excessive therefore the respondents are not entitled to costs.*
- 3. That, this Honourable court finds that the claim under the presented bill of costs in Misc. Application No. 2 of 2020 was baseless for being supported by manual receipts only.*
- 4. Costs of this reference application be provided for.*
- 5. Any relief(s) that this Honourable Court will deem fit and just to grant.*

When the application was called for hearing, the applicant enjoyed the legal service of Ms. Makoba, learned counsel, the respondent did not show appearance even after duly being served and was notified about the hearing date through phone. Therefore, this court decided to proceed *exparte* against the respondent.

Arguing on the application, Ms. Mkoba, learned counsel for the applicant they have filed a Reference Application No.08 of 2020 under order 7(1) (2), (3) &(4) and Order 48 of the Advocates Remuneration Order of 2015. She prayed for this court to adopt the applicant's affidavit and form part of her submission. Ms. Mkoba went on to state that the applicant was dissatisfied by the Ruling of Hon. Bahati Chairman of District Land and Housing Tribunal of Chato which was delivered on 21<sup>st</sup> April, 2020. It was her view that Hon. Bahati Judgment contravened Order 48 of the Advocates Remuneration Order of 2015. She went on to argue that in a situation when more than one-sixth of the total amount of a bill of cost exclusive of the court of fees is disallowed then the party presenting the bill of taxation shall not be entitled to any costs claimed thereto.

According to the applicant's Advocate submissions, she stated that the respondent prayed for Tshs 2,228,000 and the Chairman granted Tshs.



1,428,000 making the amount disallowed to be Tshs 9100,000. She went on to state that this amount is more than one-sixth of the Tshs. 2,228,000 which is Tshs. 371,333.3. She stated that either way the amount disallowed is more than one-sixth of the total amount asked for which is contrary to section 48 of the Advocates Remuneration Order of 2015.

On the strength of the above submission, Ms.Mkoba urged this court to quash the District Land and Housing Tribunal decision and disallow the bill of costs as per section 48 of the Advocates Renumaeration Order of 2015 and allow the application with costs.

Having considered the arguments for the application, I remain with one central issue for determination, and that is none other than ***whether or not the present application is meritorious.***

In the instant application, the records reveal that the respondent filed a bill of Cost at the District Land and Housing Tribunal in Misc. Application No. 7 of 2020. He claimed a total sum of Tshs. 2,228,000/= whereas the Taxing Officer awarded the applicant the amount Tshs. 1,000,000/= appearing on item 9 and Tshs. 100,000/= appearing on item 10. The Taxing Officer taxed off Tshs. 210,000/= appearing on items 1 to 7 and Tshs.

700,000/= appearing on item 8. In total, the Taxing Officer taxed in Tshs. 1,428,000/= and taxed off Tshs. 910,000/=. In accordance with section 48 of the Advocates Remunerations Order of 2015, the person who is presenting the bill of costs for taxation shall be entitled to taxation costs which is more than one-sixth of the disallowed total amount. Section 48 of the Advocates Remunerations Order of 2015 reads:-

*" 48. When more than one-sixth of the total amount of a bill of costs exclusive of court fees is disallowed, the party presenting the bill for taxation shall not be entitled to the costs of such taxation: Provided that, at the discretion of the taxing officer any instruction fee claimed, may be disregarded in the computation of the amount taxed of that fee in the computation of the one-sixth."*

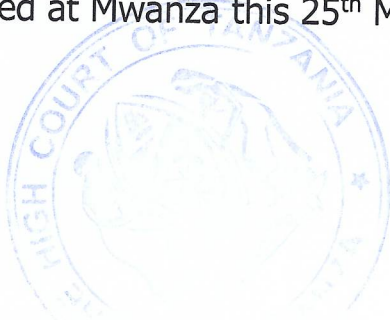
Guided by the above provision of law, I have reached a conclusion that the disallowed amount is more than one-sixth of the total amount. The respondent prayed for Tshs. 2,228,000/= and the Taxing Officer granted Tshs. 1,428,000/= making the amount disallowed to be Tshs. 910,000 whereas this amount is more than one-sixth of the total amount of Tshs. 2,228,000 which is Tshs. 389,666.7. Therefore, I am in accord with the

learned counsel for the applicant that in these circumstances, the Chairman was required not to grant the bill of costs in its totality.

In the upshot, I have found that the applicant's application has merit, therefore, I proceed to quash the decision of the Taxing Officer in Civil Reference No. 08 of 2020 and allow the reference without costs.

Order accordingly.

Dated at Mwanza this 25<sup>th</sup> May, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

25.05.2021

Ruling delivered on 25<sup>th</sup> May, 2021 via audio teleconference whereby Ms. Makoba, learned for the applicant was remotely present.

  
A.Z.MGEYEKWA

**JUDGE**

25.05.2021

Right to appeal fully explained.