



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC LAND CASE APPEAL NO.37/2020

*(Arising from Misc. Civil Application No.219/2019 of the DLHT for Kagera at Bukoba
in original Application case no.98/2018 of Kitobo Ward Tribunal)*

BI VEIDIANA FELISIAN.....APPELLANT

VRS

MCH.CHRISTIAN RUTAHAKANA..... RESPONDENT

RULING

28/4/2021&25/6/2021

Kairo, J

This ruling is in respect of a preliminary point of objection (to be referred to as PO) raised by the Respondent's counsel; Benard Mbakileki Advocate when filed a reply to the petition of appeal in Misc. Land case Appeal No.37/2020 filed in this court. The PO was couched as hereunder;

"The petition of Appeal is incompetent and an abuse of the Court process in as much as it is misconceived and does not comply with the provisions

of Order 7(1), (2), (3) and 4 of the advocates Renumeration Order, 2015, GN No.263 of 2015 and has been illegally filed”

As it's always been a practice of courts, the PO has to be determined first before embarking to hear the substantive matter. The Parties opted to dispose it by way of written submissions. By consensus, the filing scheduled of the written submissions was drawn and the parties complied to the same accordingly, to which I commend them.

Submitting for his raised P.O, Advocate Bernad Mbakileki elaborated that according to Order 7(1),(2),(3) and 4 of the Advocates Renumeration Order, 2015; GN No.263 of 2015, any party aggrieved with the decision of a Taxing Officer may file a reference to the judge of the High Court and in terms of subsection (2) of Order 7, such a reference shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days from the date of the decision to be challenged. He was to the effect that the “petition of appeal” filed by the Appellant is unfounded and contravene the dictate of Order 7. Moreover, the learned counsel added that the purported petition of appeal which ought to have been filed as reference was filed beyond 21 days, contrary to Order 7(2) without leave of the court. According to the Respondent's learned counsel, the appeal before this court is incompetent for having been filed as a normal civil appeal and the same should be struck out as a consequence. He went on that, the matter was also time barred law, as such the alternative effect is for it to undergo dismissal. He referred the court to a plethora of authorities whereby similar remedies for non-abiding to the pointed out legal requirement was effected. Few among them are the cases of **Ashraf A. Kimaro vs Mariam Mohamed Kihyo**, Civil Appeal No.45 of 2003,

HCT at Dar es salaam (Unreported), **Halima S. Sukuzi versus Sihaba Nassoro**, Land Appeal No.141 of 2016 HCT Land Division, (Unreported).

The learned counsel further draw the attention of this court arguing that the flaws could not be cured by the Overriding Objective since doing so would amount to help a party to circumvent the mandatory requirement of law. In this regard, he cited the case of **Martine D. Kumaliya & 117 others vs Iron and Steel Ltd**, Civil Application No.70/18 of 2018, CAT at Dar es salaam to back up his argument.

In his reply, Advocate John Erasto who represented the Appellant argued that looking at the entire submission of Advocate Mbakileki, nowhere had he cited any case which had tested the provision of Order 7 on the issue of appealing from the decision of the Chairman as taxing officer of DLHT to the High Court. He quoted the wordings of Order 2 as hereunder to back up his argument that the Chairman of the DLHT is not covered under the Advocates Remuneration Order, 2015 G.N 363/2015;

" This Order shall apply to the remuneration of an advocate by client in contentious and non-contentious matters, for taxation thereof and taxation of costs between a party in matters in the High Court and in courts subordinate to the High Court arbitral tribunals and tribunals from which appeal lie in the court of appeal"

He also reasoned from interpretation part under Order 3 as follows:

"The taxing Officer, means and includes the Registrar, Deputy Registrar of the High Court, Resident Magistrate in Charge of the Resident Magistrate Court or District Court, other officer of the court as chief justice may appoint or such other officer as the law may provide"

He concluded that if the law intended to include the decision of the Chairman as the taxing master of the District Land and Housing Tribunal, it could have specifically so spelt. He concluded that the rights of any person dissatisfied with the decision of the District Land and Housing Tribunal in terms of section 41(1) and (2) of Cap 216 is to appeal within 45 days to the High Court. Thus, in this appeal, the Appellant has complied to the said law.

In rejoinder, the Respondent counsel referred to a good number of cases which had earlier tested the provisions of Order 7 of the Advocates Remuneration Order and struck out appeals brought by way of petitions instead of references to fortify his stated stance. He cited the cases of **Alphonse Kisukari vs Paulo Samuel**, Land Appeal No.152 of 2019, High Court of Tanzania (Land Division) at Dar es Salaam (Unreported), **Maximilian Rwabulala vs Emilian Kalugala and another** (TLR)3 to verify that the said position had already been tested.

Responding on the Appellant's argument that the District Land and Housing Tribunal is not mentioned under order 3 and that Taxing officer does not include a Chairman of the Tribunal, the Respondent's counsel submitted that Under section 2 of Cap 216 RE 2019, Court includes the District Land and Housing Tribunal and therefore among the subordinate courts to the High Court whose appeals on bill of costs from a taxing officer like a chairman of District Land and Housing Tribunal goes to the High Court under Order 7.

Having heard the rival arguments from both counsels and considered the same, the issue for determination is whether this preliminary objection

has merit. And my answer is in the affirmative for the reasons I endeavour to advance hereunder:

One, I agree with the Respondent's counsel as well as concurring with all referred authorities by the learned counsel for the Respondent that since this matter seeks to impugn the bill of costs taxed by the taxing officer and the relevant specific law being Advocate Remuneration Order, 2015 the Appellant's appeal before this court is misconceived.

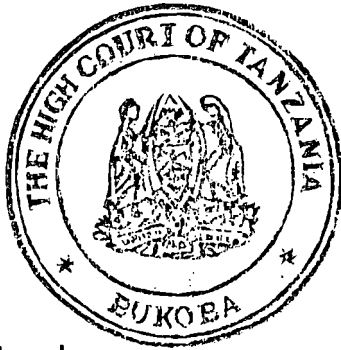
Two, the Appellant ought to have filed an application for reference under Order 7 of the Advocate remuneration Order, 2015 and the said application ought to have been by way of chamber summons supported by an affidavit as per order 7(1) & (2) of Advocate Remuneration Order, 2015. Further that the application ought to have been filed within 21 days from the date of the taxing officer's decision as correctly argued by Advocate Mbakileki.


Three, Order 7 is not ambiguous as the chairman in charge of the DLHT is a taxing officer, and in that regard the DLHT is the subordinate to High Court upon which any challenge to the bill of costs is taken to High Court as reference.

Four, I am also in agreement with the Respondent's counsel that this is not a flaw which can be served by the overriding objective/the oxygen principle as it touches the jurisdiction of this court since the court cannot legally entertain the purported appeal instead of a reference. Thus, curing amounts to assisting the Appellant to circumvent the mandatory provision of law as rightly observed in the referred case of **Martine D. Kumaliya & 117** (Supra) others cited by Advocate Mbakileki.

In the afore going reasons, this appeal is not properly before this court and I am constrained to struck it out as I hereby do, with costs for want of competence.


It is so ordered.




L.G. Kairo
Judge
25/6/2021

R/A explained;




L.G. Kairo
Judge
25/6/2021

Date 25/6/2021

Coram: Hon. J.M. Minde, DR

Appellant: Present

Respondent: Absent with notice

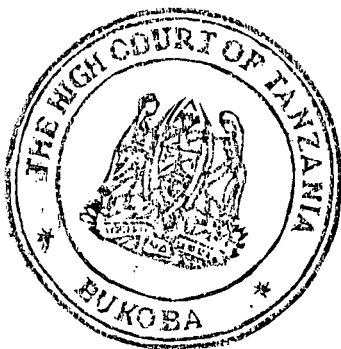
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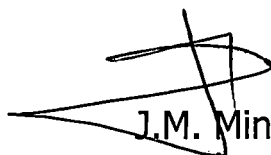
Advocate Mbakileki for the Respondent:

This matter was set for ruling. We are ready to receive ruling if it is ready.

Court:

Ruling delivered this 25/6/2021 in the presence of parties and Advocate Mbakileki for Respondent.




J.M. Minde

Deputy Registrar

25/6/2021