

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

AT TANGA

CIVIL REFERENCE NO.6 OF 2020

(Arising from the Ruling of District Land and Housing Tribunal
forTangain Bill of Costs No. 22 of 2019)

JOSEPH RASHID MTUNGUJA APPLICANT

VERSUS

ERNEST HUME 1st RESPONDENT

SELEMANI KASSIM 2nd RESPONDENT

RULING

MKASIMONGWA, J.

The Applicant one Joseph Rashid Mtunguja is dissatisfied by the Ruling of Tanga District Land and Housing Tribunal in Bill of Costs No. 22 of 2019 which awarded, against Ernest Hume and Selemani Kassim, a sum of Tshs. 1,720,000/= out of Tshs. 8,438,000/= claimed in the Bill of Costs. As such he referred the matter to this Court, so that it considers the propriety of the Award. To that affect the Applicant through the legal services of Mr. Ladislaus Ngomela (Adv) filed a Chamber Summons which was presented for filing on 30/09/2020. The Chamber Summons is supported by affidavit sworn by Joseph Rashid Mtunguja.

In response to the Application duly served on them, the Respondents severally filed Counter Affidavits. Along with the Counter Affidavits, the

Respondents filed respectively, Notice of Preliminary on point of law. Going by the Notices the Respondents had one and the same ground of the Preliminary Objection that is: the Reference is hopelessly time barred. The Applicant did not concede to the Preliminary Objection and when the same came for hearing before me whereas the Respondents appeared in person Mr. Ngomela (Adv) appeared on behalf of the Applicant.

When were invited to argue the case, the first Applicant submitted to the effect that, the parties to this matter were again parties to an Application for Taxation in Bill of Costs filed in the District Land and Housing Tribunal. The matter was determined on 10/09/2020 and being aggrieved by the decision therein, the Applicant brought this matter challenging the same. Going by the record this matter was filed on 07/10/2020. The first Respondent submitted, that based in the dates, this Application is time barred for the same ought to have been filed within twenty one (21) days of the contested Ruling. Since the Application was filed out of the period of limitation prescribed by rules and since there was no leave of the Court granted to have the Application been filed out of said period of time the Court is asked to find the same being time barred and

accordingly an order dismissing it should be given. The second Respondent subscribed to all what was submitted by the first Respondent.

On the other hand, Mr. Ngomela (Adv) submitted that, the Applicant is dissatisfied by Ruling of the District Land and Housing Tribunal for Tanga in Taxation of Bill of Costs No. 22 of 2019 dated 11/09/2020. As such he came to the court with this Application which was registered on 30/09/2020, on payment of the necessary court fees and issued, with Receipt No. FH 602451601451850. As to why the Register signed the Chamber Summons on 07/10/2020 is beyond their knowledge. Order 7(1) of the Advocates Remuneration Order, 2015 (GN No. 164 of 2015) provides for a limitation of 21 days period from the date of the decision to the date when this like application is filed. Counting from when the ruling the subject of this matter that is 11/09/2020 to 30/09/2020 when this application was filed it is evident that this Application was instituted within the prescribed limitation. As such the preliminary objection raised by the Respondent is devoid of merit and the same should be dismissed.

Nothing material was submitted by the Respondents by way of rejoinder. They, but reiterated their submission in chief as well as the prayer to have this matter been dismissed for being time barred.

I have considered the submission for both parties. It is not disputed that parties to this Application were again the parties to the Bill of Costs No. 22 of 2019 filed in the District Land and Housing Tribunal for Tanga. Going by the Ruling therein, the Taxation of Costs proceedings in the matter were determined on 11/09/2020 by the Ruling of the Tribunal delivered in the presence of the Applicant and first Respondents. The Applicant was dissatisfied by the Ruling and he sought for remedy provided for under Order 7(1) of the Advocates Remuneration Order, GN 263 of 2015 which provides as follows:

"Any party aggrieved by a decision of the Taxing Officer, may file reference to a Judge of the High Court".

Suborder (2) of Order 7 of the Order provides for time limitation in respect of Reference filed under the Order. Order 7(2) reads as follows:


"A reference under Order 7 (1) shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days from the date of the decision"

The issue to be determined here is whether this reference case was filed within the prescribed period of limitation of 21 days from the date of the decision. As said earlier the contested decision was delivered on 11/09/2020. Reading from the Chamber Summons and the Affidavit filed in

support of the summons, it is conspicuously clear that the Chamber Summons was presented to the Court for filing on 30/09/2020 and that the Applicant was issued with a receipt No. FH 602451601451850 dated 30/09/2020 upon payment of the requisite court fees. These facts in my view justify a finding that the Application was filed on 30/09/2020. Counting from 11/09/2020, when the Ruling was delivered to 30/09/2020 when this Application was instituted the Applicant cannot be faulted on ground that he instituted this matter beyond the limitation period prescribed by the order.

In event, I find no merit in the preliminary objection raised by the Respondents. Subsequently, the objection is overruled. No order as to costs is made at this stage of the case.

Dated at Tanga this 10th of May, 2021.



E. J. Mkasimongwa

JUDGE

10/05/2021

Date: 10/05/2021

Coram: E. J. Mkasimongwa, J

For Applicant: Mr. Ngomela (Adv)

For Respondent: 1st Present

C/C: Alex

Court: Ruling delivered in Chambers this 10th of May 2021, in the presence of the Mr. Ngomela (Adv) for the Applicant and the first Respondent only.




E. J. Mkasimongwa
JUDGE
10/05/2021