

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

**IN THE DISTRICT REGISTRY OF MBEYA**

**AT MBEYA**

**PC. CIVIL APPEAL NO. 06 OF 2021**

(Arising from the District Court of Mbeya District, at Mbeya, in Bill of Cost No. 8 of 2019 and Civil Appeal No. 07 of 2019, Originated in the Primary Court of Mbeya District, at Uyole in Civil Case No. 11 of 2019)

**BOAZI MWAIPWISI MWAKIFUMBWA.....APPELLANT**

**VERSUS**

**BERTHA JONES MARO.....RESPONDENT**

**RULING**

*Date of last Order: 08.07.2021*

*Date of Judgment: 10.09.2021*

**Ebrahim, J.**

This is a ruling on an issue raised by the court *suo motu*. The appellant BOAZI MWAIPWISI MWAKIFUMBWA filed an appeal challenging the decision in Bill of Cost No. 08 of 2019 issued by the District Court of Mbeya, at Mbeya in which the respondent, BERTHA JONES MARO was a decree holder.

When the appeal came before this court for hearing on 02/06/2021, the appellant appeared in person, unrepresented whereas the respondent was represented by Mrs. Joyce Kasebwa, learned Advocate. Parties prayed to argue the appeal by written submissions. However, before the court granted the prayer, it observed the irregularity to the appeal as the appeal was challenging the decision in Bill of Cost. The court thus directed the parties to firstly argue the issue as to whether the appeal before the court was competent. Again, since parties had previously agreed to argue the appeal by written submission, the issue raised by the court was therefore ordered to be argued by the same way.

In his submission, the appellant did not direct himself on the issue raised by the court as hinted above, however, he continued arguing on the grounds of appeal.

On her part, counsel for the respondent argued that the appeal was incompetent since the decisions in the Bill of cost are challenged by way of reference as provided under **Order 7 of the Advocates Remuneration Order, 2015.**

In his rejoinder submission, the appellant conceded that he did not argue the issue raised by the court. That was because he is a layman and he had no legal representation. He also conceded that the decision in bill of cost is challenged by way of reference and not by way of appeal. However, he prayed for this court to consider his grounds of appeal since the mistake he made was instigated by his ignorance of the law for being a layman.

Indeed, the decision in the bill of cost challenged by the appellant was issued by the learned Resident Magistrate in charge of the District Court of Mbeya, in that way, he presided as a Taxing officer as **per Order 3 of the Advocates Remuneration Order, 2015 (G.N. No. 263 of 2015)**. That being the case **Order 7 (1) of the G.N.** which provides that:

*"Any party aggrieved by a decision of the Taxing officer, may file reference to a judge of the High Court."*

The law also requires an application for reference to be instituted in court by way of chamber summons supported by an affidavit. And the same is required to be made within 21 days from the date of the decision. The applicant is obliged to serve the

respondent with copies of the application within seven days from the day of filing of the application. These are provided under **Order 7 (2) and (3) of the G.N.** which provides that:

*“(2) A reference under order (1), shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days of from the date of the decision.*

*(3) The applicant shall within seven clear days of filing reference save copies all parties entitled to appear on such taxation.”*

Basing on this requirement of the law, it is apparent that the appeal brought by the appellant was a misconception of the law, hence, it is incompetent before this court. A remedy for an incompetent matter is none other than striking it out; see the guidance by the Court of Appeal of Tanzania in the case of **Mabibo Beer Wines & Spirits Limited v. Fair Competition Commission & Others, Civil Application No. 132 of 2015, at Dar es Salaam** (unreported).

Consequently, I hereby struck out the appeal for being incompetent. I order no costs since the issue led to the end of this matter was raised by the court *suo motu*.

Ordered accordingly.



  
**R.A. Ebrahim**  
**Judge**

**Mbeya**

**10.09.2021**

**Date:** 10.09.2021.

**Coram:** P. D. Ntumo – PRM, Ag-DR.

**Appellant:** }

**Respondent:** } All present.

**For the Respondent:** Miss Joyce Kasebwa, Advocate.

**B/C:** P. Nundwe.

**Court:** Ruling delivered in open chambers in the presence of the Parties and Mrs. Joyce Kasebwa, learned counsel for the Respondent, this 10<sup>th</sup> day of September, 2021.



P.D. Ntumo - PRM

Ag- Deputy Registrar

10/09/2021