

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

Miscellaneous Civil Appeal No. 3 of 2021

ALEXANDER JONAS BARUNGUZAAPPLICANT

VERSUS

THE BANK OF TANZANIA 1ST RESPONDENT

HONORABLE ATTORNEY GENERAL 2ND RESPONDENT

RULING.

Date of last 13.10.2021

Date of Ruling 21.10.2021

MARUMA, J.

This appeal is resulted from the ruling delivered on 31st August 2021 before the Registrar of the High Court which dismissed the application for remission of court fees. Aggrieved by the decision of the Registrar, the appellant filed a memorandum of appeal before this court termed as Miscellaneous Civil Appeal No.3 of 2021. The same was served to the respondents.

When the matter was set for hearing, Ms. Kause Kilonzo, State attorney appeared for the 1st and 2nd respondents raised a concern that the Applicant filed an appeal instead of reference as the law requires. She submitted that the appeal is incompetent and prayed for the same to be struck out.

Having given consideration to the legal issue raised, the court invited the parties to address for the same to ascertain whether the court was properly moved.

Addressing the court, Ms. Kilonzo submitted that, the Appellant is aggrieved with the decision of Registrar and hence this appeal. Looking at the Rules, the Court Fees Rules GN No. 247 of 2018, rule 6(6) provides a reference for refusal shall lie within 14 days in the case of DR, RM or DC. She concluded that for the above rule, the appeal is incompetent and should be struck out.

Responding to the issue raised, Mr. Alexander, the appellant gave definition of a word "reference" as used under section 6 (6) and (7). His argument was that the word "reference" does not mean a mode to refer grievances to the court. He adopted the definition according to Black's Law Dictionary 8th Edition by Brian Garner at page 1306 which define the word "reference" to mean an act of sending or directives to another for information, service, consideration or decision; specific the act of sending a case to a master or referee for information or decision. He added that the word "reference" is an order of sending a case to a master or referee for information or decision. He went on saying that what is in court is properly instituted because the word "reference" has been used to mean

an act and not a mode. He further said that word is used in Court Fees Rules, 2018 has no meaning as of that found under section 77 and order XLI rule 1 of the Civil Procedure Code [Cap.33 R.E 2002]. The reference which has been provided under the Court Fees Rules does not specify what mode to be used to refer the matter against the refusal. He submitted that the reference herein covers two kinds of people who may apply for remission of fees, one is under rule 6(2) and the other one is provided under rule 6(3). The first one is done by way of chamber summons supported by affidavit and is done before the High Court while the second one is done either in written form or orally and it is done before the subordinate court. He further submitted that the present reference is against the order of the Honourable Registrar to refuse to remit any fees so this appeal is properly as per Order XXXIX and section 74 of Civil Procedure Code [Cap.33 R.E 2002].

Ms. Kilonzo made a short rejoinder that, in judicial jurisprudence an appeal and application for reference are two different things despite all of them being creatures of statutes. While agreed that the application of reference is brought by two ways, under rule 6(6) and 6(3), she submitted that the ruling delivered on 31st August 2021, was resulted from the application brought under 6(2) hence the only way to challenge that ruling

was by a way of reference. She further submitted that if the maker of GN no. 242 was intended at all to be by a way of an appeal he could provide the same but, it is clear that the way of challenging the decision under rule 6 (2) is by the way of reference as provided under rule 6(6). It is not proper for the Appellant to move this court by way of an appeal. Section 74(1) and order XXXIX of CPC referred are not applicable because the Rules are very clear and where there is a specific law, the general rule is not applicable.

Having considered submissions by both parties addressing the legal issue on whether this appeal is properly brought before this court. Generally, it has been the right of any party aggrieved by the decision to challenge the same in a proper forum with specified modality. Notably, the applicant in the current application, is aggrieved by the decision of the Registrar rejected the application for remission of court fees made under rule 6(2) of the Court Fees Rules, 2018 hence this appeal to challenge the decision.

From the wording of the statute **rule 6(6)** of the Court Fees Rules reads:-

*(6) A **reference** against a refusal to remit any fee or any part thereof shall lie within 14 days-*

(a) N/A

(b) in the case of an order from the Registrar or a court of a resident magistrate or a district court, to the High Court

From the above quotation, the statute has itself provides reference as the modality through which a party dissatisfied by the decision may channel his grievances to the High court. Taking into account the intention of the law maker, incorporating Black's law Dictionary meaning while interpreting rule 6(6) as submitted by the Applicant would defeat the major purpose of making these rules. This court has to consider reference as a mode suggested by the statute to refer the claims of grievances to the high court. Just as submitted by the Respondent, the provision of Civil procedure Code are general hence cannot apply in this application where there is specific provision provided by the Rules.

The question of modality was also discussed in the case of **Gautam Jayram Chavda Vs Covell Mathews Partnership, Taxation Reference No. 21 of 2004**, where Mroso J. while borrowing the spirit in section 119(1) of Court Fees Rules demonstrated that, any aggrieved part in taxation matter before Registrar should approach the High court by way of refence.

Having the guidance above, I am of the settled mind that, this application is incompetent for being wrongly brought before this court. The same is accordingly struck out.

It is so ordered.

Dated in Dar es Salaam this 21st October 2021



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Z.A.Maruma,

JUDGE

21/10/2021.

Ruling delivered in Chambers this 21st October 2021 in the presence of Alexander Jonas Barunguza, the Appellant and Mr. Edwin Joshua Webiro, State Attorney for the 1st and 2nd respondents.



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Z.A.Maruma,

JUDGE

21/10/2021