

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

LAND REFERENCE NO. 3 OF 2018

(C/F Taxation Cause No. 101 of 2016)

THE REGISTERED TRUSTEES OF

CATHOLIC ARCHDIOCESE OF ARUSHAAPPLICANT

VERSUS

NESTORY MSOFI 1ST RESPONDENT

HONEST MSOFI..... 2ND RESPONDENT

GASPER MASSAWE3RD RESPONDENT

ESTHER MZIRAY (as legal representative

of the late NOVATUS STEVEN4TH RESPONDENT

EVANS LEMAMA5TH RESPONDENT

ILLUMINATA TEMBA 6TH RESPONDENT

MARIA SENGE7TH RESPONDENT

RULING

1/3/2021 & 19/3/2021

ROBERT, J:-

The Applicant herein moved this court by way of reference under order 7 (1) and (2) of the Advocate Remuneration order, G.N. No. 264 of

would continue to be adjourned for unknown period with uncertainty as to who would be the winner.

Aggrieved, the Applicant filed this application challenging the decision of the Taxing Officer by way of reference on grounds stated particularly at paragraphs 6, 7, 8 and 9 of the supporting affidavit reproduced below for comfort of reference:

- 6. That, the law requires Taxation Cause to be filed within 60 days from the date of Judgment.*
- 7. That, it was improper for Honourable Deputy Registrar to stuck out Taxation Cause No. 101 of 2016, for reasons that the same has been prematurely filed.*
- 8. The Honourable Deputy Registrar misguided himself on the law and fact that there is still a room for a winner to file a bill of costs after the matter in question being fully determined.*
- 9. That, the Honourable Registrar did not consider the fact that the applicant will incur unnecessary costs, in the event the respondents intended appeal before the Court of Appeal fails, as the Applicant will have to file an application for extension of time before lodging a pertinent taxation summons.*

When this matter came up for hearing on 17/11/2020, Ms. Neema Mtayangulwa, learned counsel appeared for the Applicant while holding brief for Mr. Allan Godian, counsel for the Respondents. At the request of parties, the Court ordered parties to proceed with the hearing by filing written submissions.

the hearing of the taxation cause from time to time for proper cause and maintained that, in the present matter, the Taxing Officer was supposed to adjourn the matter instead of striking it out.

She prayed for the Court to allow this application by making orders that Taxation Cause No. 101 of 2016 was properly lodged and the Taxing Officer's order dated 26th September, 2018 be quashed and set aside. She also prayed for costs of this reference to be paid by the Respondent.

In response, counsel for the Respondent submitted that there is only one issue to be determined by the court in this matter, that is, whether it was proper for the Court to proceed dealing with the bill of cost of while the judgment resulting into the said cost is being challenged at the Court of Appeal. He argued that, at the time of the decision of the Taxing Officer the Respondents' application for leave to appeal to the Court of Appeal was pending before this Court and at this time an appeal has already been lodged before the Court of Appeal. He maintained that it was not proper for the Taxing Officer to continue taxing bill of cost while he didn't know what would be the result of the Court of Appeal decision. He referred the Court to the decision in the case of **Maximilian Rwabulala vs Emilian Kalugala & Another (1987) TLR 2** where the Court held that:

should also add that, by the time of this application, the prescribed time for filing an appeal against Land Case No. 46 of 2014 had already lapsed. This means, in terms of complying with the prescribed time for filing an application for taxation, the Applicant's application was properly lodged. However, it seems to this Court that issues emerged when the Respondents filed Misc. Application No. 172 of 2017 praying for leave to appeal to the Court of Appeal against Land Case No. 46 of 2014. The Applicant prayed for adjournment of the matter pending determination of an application filed by the Respondents. The Taxing Officer decided to strike out the Taxation cause after making an observation that the bill of cost was prematurely filed having been filed prior to the suit being fully completed. She had a concern that, the matter would continue to be adjourned for unknown period with uncertainty as to who would be the winner.


The decision of the Taxing Officer implies, as I see it, that, an application for taxation becomes premature and liable to be struck out whenever a Judgment Debtor who is late in challenging the decision awarding costs to the Decree Holder decides to file an application for extension of time to file an appeal. Holding so is aberrant and insupportable as it is not only rewarding to the Judgment Debtor for being

to be adjourned. In other words, it carries the implication that there is no matter before the court which is not the position in the present case.(See **Juma Nhandi v. Republic**, Criminal Appeal No. 289 of 2012 (unreported); **Ngoni - Matengo Cooperative Marketing Union Ltd v. Ali Mohamed Osman** [1959] E.A. 577, **Emmanuel Luoga vs Republic**, Criminal Appeal No. 281 of 2013 (unreported); **Yahya Khamis vs Hamda Haji Idd & 2 Others**, Civil Appeal No. 225 of 2018 (unreported); and **Amon Malewo vs Diocese of Mbeya (R.C)**, Civil Appeal No. 22 of 2013 (unreported).

In view of the reasons given, I allow this reference. As a consequence, I quash and set aside an order of Taxing Officer made on 26th September, 2016 striking Taxation Cause No. 101 of 2016 between the parties herein and direct the matter to be adjourned pending the determination of the Respondents' application for leave to appeal to the Court of Appeal in Misc. Land application No. 172/2017 and, if granted, pending the outcome of an appeal before the Court of Appeal of Tanzania.

It is so ordered.




K.N. ROBERT
JUDGE
19/3/2021