

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

LAND REFERENCE NO. 6 OF 2020

(Originating from Bill of Costs No. 4 of 2020 in the High Court of
Tanzania, at Mbeya)

BENJAMINI MWAKYALA.....APPLICANT

VERSUS

GEOFREY A. NDALANDA.....RESPONDENT

RULING

Date of last Order: 20.10.2021

Date of Ruling: 03.12.2021

Ebrahim, J.

The applicant, BENJAMINI MWAKYALA being discontented with the dismissal order for want of prosecution dated 15/10/2020 before Hon. N.W. Mwakatobe, Taxing Master in Bill of Cost No. 4 of 2020, preferred this application for this court to examine whether the dismissal was viable. It was preferred under **Order 7(1) and (2) of the Advocates Remuneration Order of 2015, G.N. No. 264**. It was supported by an affidavit sworn by Mr. Ignas F. Ngumbi, counsel for the applicant. The respondent filed a counter affidavit sworn

by the respondent himself opposing the application. He also raised a preliminary objection (PO). The PO was pegged on three limbs as follows:

- i. The application is fatally defective for wrong citation of the provisions of the law.
- ii. That the application is incompetent for contravening with **Order 7(3) of the Advocate Remuneration Order, 2015.**
- iii. That the application is incompetent for not being properly verified.

The PO was argued by way of written submission. The applicant was represented by Mr. Ngumbi, learned counsel and the respondent appeared in person, unrepresented.

Regarding the 1st limb of the PO, the respondent submitted that the applicant's counsel wrongly cited the enabling law in the chamber summons. Instead of citing it as the **Advocate Remuneration Order, 2015 G.N. No.264 published on 17th July 2015** he just cited it as **Advocate Remuneration Order, 2015.**

The respondent also contended that the application was supposed to be brought under **section 95 of the Civil Procedure**

Code, Cap. 33 R.E 2019. This is because, the bill of costs was dismissed for want of prosecution, the applicant was thus, supposed to apply for setting aside of the dismissal order and not filing a reference as he did. According to him wrong citation of the provision of enabling law is incurably fatal per the case of **Antony J. Tesha v. Anita Tesha**, Civil Appeal No. 10 of 2003 Court of Appeal of Tanzania (CAT) (unreported).

Responding to the 1st limb of the PO, Mr. Ngumbi argued that no wrong was committed in citing the enabling law since Order 1 of the same law provides for how can the law be cited, hence was cited correctly. He also opposed the contention that he was supposed to apply for setting aside of the dismissal order. Mr. Ngumbi contended that, there is no such remedy in the **Advocate Remuneration Order, 2015**. The only remedy available to a party aggrieved by the decision of taxing master is to file a reference under **Order 7 (1) and (2) of the same law**.

Indeed, order 1 of G.N. No. 264 of 2015 provides that:

"This Order may be cited as the **Advocates Remuneration Order, 2015**." (Emphasis added). That being the position of the law I find no wrong committed by the applicant in citing the enabling law.

As to the contention that the applicant was supposed to apply for setting aside of the dismissal order under **section 95 of the CPC instead of filing reference under Order 7(1) of G.N. No. 264 of 2015**; I tried to pass through the law, but I found nothing relating to how the order of dismissal for want of prosecution can be challenged. The only relevant provision of the law is **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”

Nevertheless, since the case was dismissed for want of prosecution, in borrowing a leaf from the provisions of the Civil Procedure Code, Cap 33 RE 2019, the applicant ought to have applied for restoration of the same as the Taxing master had not decided anything yet in respect of Taxation of costs as per the contextual meaning of Order 7 (1) of GN No.264/2015. Therefore, I sustain the second point of objection.

Having found that the applicant ought to have filed an application for restoration instead of the instant application, I find

no reason to belabor on other points of objection. Accordingly,
the application is misconceived and I dismiss it with costs.

Accordingly ordered.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over the seal.

R.A. Ebrahim

JUDGE

Mbeya

03.11.2021

Date: 03.12.2021.

Coram: P. D. Ntumo – PRM, Ag-DR.

Applicant: Absent.

For the Applicant: Miss Tumaini Amenye, Advocate hold brief for Mr.
Ignas Ngumbi.

Respondent: Present.

B/C: Patrick Nundwe.

Court: Ruling delivered in open chambers in the presence of Miss Tumaini Amenye, Advocate holding brief for Mr. Ignas Ngumbi, learned counsel for the applicant, and the Respondent this 3rd day of December 2021.



P.D. Ntumo - PRM

Ag- Deputy Registrar

03/12/2021