

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LAND REFERENCE NO. 04 OF 2021**

*(Originating from Taxation cause No. 06/2019 H/C of Bukoba and in Misc. Civil Application No. 35/2016 of the High Court of Bukoba)*

**HENERICO BITAMANYIRWE.....APPLICANT**

***VERSUS***

**COSMAS NKUNA.....RESPONDENT**

**RULING**

*08<sup>th</sup> April & 06<sup>th</sup> May 2022*

***Kilekamajenga, J.***

The applicant moved this Honourable Court by way of chamber summons challenging the decision of the taxing master in taxation cause No. 6 of 2019. The reference was made under Order 7 (1) and (2) of the Advocates Remuneration Order, GN No. 264 of 2015 and any other enabling provisions of the law. The application was supported with an affidavit deposed by the applicant.

The brief facts leading to this reference are as follows: The applicant and responded have been battling in Court for a piece of land since 1996. The case finally ended in favour of the applicant. Being the decree holder, the applicant applied for the bill of costs before this Court. He claimed Tshs. 31,061,000/= as total costs incurred by him in prosecution the case since 1996 until 2019. The



Deputy Registrar of the High Court at Bukoba, being the taxing master awarded Tshs. 1,190,500/= instead of Tshs. 31,061,000/=. Aggrieved with the decision of the taxing master, the applicant preferred the instant reference.

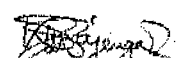
This matter was finally scheduled for hearing. All the parties were present in person. Also, the applicant was represented by the learned advocate, Mr. Ibrahim Mswadick whereas the respondent was represented by the learned advocate, Mr. Alli Chamani. Mr. Mswadick for the applicant argued that, the bill of costs was presented in three categories, thus costs of prosecuting the case in the Primary Court; costs of prosecuting the case in the District Court; costs involved in the High Court and other incidental expenses. He argued that, these costs were not granted by the taxing master despite the fact that the case has been in Court for more than 25 years. In this case, the applicant was being represented by an advocate. The counsel further urged the Court to consider the time spent by the applicant in prosecution this case and the costs involved.

On the other hand, Mr. Alli Chamani for the respondent argued that, the Primary Court was closer to the parties and that some other items in the bill of costs have been exaggerated. He further argued that the item on consequential financial loss is not supposed to be part of the bill of costs.

When rejoining, the counsel for the applicant argued that the consequential costs are normally granted at the discretion of the Court; the production of receipts is not mandatory unless so required by the taxing master.

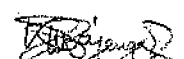
Having considered the rival arguments from the parties, it is now apposite to consider the merit of the bill of costs filed by the applicant. The total claim for bill of costs filed by the applicant before the taxing master was at the tune of Tshs. 31,061,000/=. This amount includes the total costs of attending to the case from 1996 to 2019 and other consequential financial loss. There is no doubt, the parties have been fighting in Court for a piece of land measuring 30 x 10 footsteps for more than twenty five years. Actually, the costs of prosecuting a case cannot be easily quantified. I am aware that, a case normally causes financial loss, stress and inconveniences; a case may ruin ones economic stability by frequently attending to court.

According to the bill of costs at hand, the applicant claimed the total costs of attending to the case at the tune of Tshs. 3,061,000/=. In my view, this is a reasonable amount considering the fact that the case was in Court corridors for more than 25 years. I think, the taxing master erred in awarding Tshs. 1,990,500/=; in fact, this amount is not realistic. I understand, the procedure and well known practice may demand the applicant to file bill of costs in every

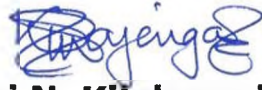


court which decided this case. In my view, this procedure is unfair because the applicant might have been already time barred to file a bill of costs in the Primary Court or District Court at this stage. I actually find no reason for the High Court for not granting the whole bill of costs when the case ends at its stage. This practice may reduce stress to the parties and trim-down multicity of cases for such an obvious matter.

Furthermore, in this case, it is undisputed fact that, both the applicant and respondent incurred costs in prosecuting the case. Some of the costs may not be proved by a receipt. For instance, where a person hires a motor bike (bodaboda) or gets food from a Mama Ntilie, it is irrational under such circumstances to demand for a receipt from such services. In this case therefore, the applicant, definitely incurred expenses in prosecution the case. He did not freely use the land for such a long time while waiting for the final court decision. The case caused stress and other un-quantified financial losses to the applicant which, in my view, the respondent should shoulder. Hence the rationale of awarding costs for other consequential financial losses becomes pertinent. In conclusion, I hereby allow this application with costs and I award Tshs. 3,061,000/= as costs of prosecuting the case in the High Court. I also award Tshs. 10,000,000/= as other consequential loss suffered by the applicant in prosecution the case for



more than 25 years. In total, I award 13,061,000/= as the total bill of costs to be paid by the respondent. It is so ordered.



**Ntemi N. Kilekamajenga**

**JUDGE**

**06/05/2022**

**Court:**

Ruling delivered this 06<sup>th</sup> May 2022 in the presence of the applicant and respondent all present in person. Right of appeal explained.



**Ntemi N. Kilekamajenga**

**JUDGE**

**06/05/2022**

