

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

CIVIL REFERENCE NO. 05 OF 2021

*(Arising from Bill of Cost No. 14 of 2018 and arising from Misc. Civil
Application No. 13 of 2021)*

SISI KWA SISI PANEL BEATING

AND ENTERPRISES LIMITED- -----APPLICANT

VERSUS

MANDELA INDUSTRIAL

CO-OPERATIVE SOCIETY-----RESPONDENT

RULING

Last Order: 22.06.2022

Judgement: 11.07.2022

M. MNYUKWA, J.

The applicant has moved this court by way of chamber summons supported by an affidavit sworn by JULIUS MUSHOBOZI under Order 7(1) and (2) of the Advocates' Remuneration Order No. 264 of 2015. The applicant prays for the following: -

- a) *That this Honourable Court be pleased to tax off the amount of Tsh. 5,847,500/= on the following grounds;*



- (i) The Honourable Deputy Registrar failed to consider that the Bill of costs No. 14/2018 was time-barred, and was never proved as required.*
- (ii) The Honourable Deputy Registrar failed to consider that the instant Court had no jurisdiction to tax the costs awarded by the District Land and Housing Tribunals.*
- (iii) That the Honourable Deputy Registrar failed to determine the objection first to finality before determining the bill of costs.*
- (iv) The Deputy Registrar awarded for the already abandoned costs.*
- (b) That the costs of Tshs. 5,847,500/= be set aside.*
- (c) The costs of this application and costs of the application therefrom.*

The application was heard by way of written submission whereby the applicant was represented by Mr. Julius Mushobozi, learned counsel, while the respondent was represented by Mr. Demetrius Mtete, also learned counsel.

Before I go further, I find it pertinent to state the brief background that has led to the institution of this application which goes as follows: -

The applicant herein instituted Land Application No. 175 of 2005 before the District Land and Housing Tribunal seeking an order for the 2nd respondent to be declared a trespasser into premises located at Igogo



area within Mwanza City, eviction of 2nd respondent from the same premises and payment of Tsh. 15,187,095/=. The applicant's application was rejected with costs. Dissatisfied, the applicant lodged Land Revision No. 03 of 2016, which was dismissed without costs. Being further aggrieved, the applicant instituted Misc. Land Application No. 224 of 2017. Unfortunately, the same was instituted under the wrong provision of the law, as a result, it was struck out with costs. The applicant did not rest, she went on instituting Misc. Application No. 60 of 2018 which she withdrew, and later on, instituted Misc. Application No. 160 of 2018 which was dismissed.

After the last application being dismissed, the respondent then instituted Bill of Cost No. 14 of 2018 in respect of Land Application No. 175 of 2005 before the District Land and Housing Tribunal, and Misc. Land Application No. 224 of 2017 before the High Court. Following the taxation application, the applicant herein raised a preliminary objections containing three grounds that;-

- a) The application is bad in law for misjoinder of course of actions.
- b) The application is bad in law for being time-barred.
- c) The application is incurably defective for want of proper applicant.

The taxing officer ordered the preliminary objections to be heard by way of written submissions and the parties complied. The taxing officer



determined the raised preliminary objection by dismissing it as it had no merit. He further heard and determined the Taxation Application by taxing the total cost in tune of 5,847,500/= while Tsh. 1,032,500/= was taxed off. Now the applicant was aggrieved and he is now before the court prays for this court to invoke its powers under Order 7(1) and (2) of the Advocates' Remuneration Order No. 264 of 2015.

As I earlier said this application was argued by way of written submission and I appreciate both parties for compliance with the scheduling order for filling their written submission.

The applicant started his submission by adopting the affidavit to be part of his submission. He then stated that, this Reference Application is due to the Ruling of the taxing master that granted both District Land and Housing Tribunal costs as well as High Court costs while costs of the District Land and Housing Tribunal costs were already abandoned by the respondent through his written submission while arguing the preliminary objection raised against the Taxation Application.

The applicant went on to submit on the second ground that, whether the Taxing officer had the power to determine the bill of costs arising from the Mwanza District Land and Housing Tribunal. It is the applicant's submission that, the District Land and Housing Tribunal has powers to execute its own decrees as provided for under section 33(3) of

the Land Disputes Courts Act, Cap 216 R.E 2019. The applicant's counsel cited the case of **Nsobi Mwaipungu vs Curtis Mwabulanga**, Land Reference No. 3 of 2017, High Court of Tanzania at Mbeya, insisting that the costs related to the District Land and Housing Tribunal ought to be filed in the Tribunal where there is no evidence that the judgement in the High Court had awarded the decree-holder with cost before it and before the District Land and Housing Tribunal. That, likewise in our case at hand, the High Court in Misc. Land Application No. 224 of 2017 did not award costs before the District Land and Housing Tribunal, therefore the Tribunal has to execute its own decree.

Applicant's counsel, went on to argue the (iv) ground as appearing in the chamber summons that, whether the taxing officer was right to tax costs already abandoned. He submitted that, on the 5th day of June 2020, the respondent abandoned costs from the District Land and Housing Tribunal through his own submissions, but the taxing officer proceeded to tax the abandoned costs.

On the first ground as to whether the bill of costs was time-barred, it is the applicant's submission that, there were two courses of action. One that arose from the District Land and Housing Tribunal and the other being that originated from the High Court. He further submitted that, it is trite law that once one course of action is time-barred then the whole courses

of action are time-barred and need to be dismissed. He cited the case of **Sarbjit Singh Bharya & Another versus NIC Bank Tanzania Ltd AND Another**, Civil Appeal No. 94 of 2017, where the Court of Appeal of Tanzania held the plaint was time-barred after the amended plaint introduced new facts that implied that, the breach of contract and tortious liability was time-barred. He further stated that the Court of Appeal held that the law of limitation is a creature of a statute which geared toward regulating litigants to abide by the time limits set by the law.

He further submitted that, the bill of costs that was lodged on 27/5/2018 was time-barred as per Order 4 of the Advocates Remuneration Order GN. NO. 264 of 2015, as it was supposed to be lodged within 60 days after the costs were awarded as it was also held in the case of **Dorin Rugalabamu vs Kweyamba Joseph Lwempisi & Another**, HC Civil Reference No. 02 of 2019, HC Mwanza (Unreported)

The applicant's counsel went on to submit whether the costs awarded were never proved as required. it is his submission that, the taxing officer unlawful awarded the item B costs which were for court attendance (a total of Tsh. 1,690,000/=). That he also taxed drawing fees, which were part of instruction fees. he cited the case of **Triple "B" Supplies[T] Ltd vs Joakim Sham Joakim Ngoteiya & Another**, Civil Reference No. 05 of 2020, where the court held that the claim of costs for



attendance in Court and for drafting are all irrational and as they fall in the instruction fees already sought.

The applicant's counsel, further submitted that, there was no reason given for taxing Tsh. 5,847,000/=, citing the case of **Iddi Nzimano vs National Bank of Commerce** [2002] TLR 412 which defined taxation to mean a system of scrutinizing bill of costs. He further insisted that, justice demands the applicant to be entitled to a reason on how taxing officer did arrive to his decision as it was held in the case of **Nemes Ngowi vs Juliana Martin**, Land Reference No. 2 of 2019.

Lastly, the applicant's counsel submitted on the third ground as to whether the taxing officer did not determine the objection raised. That, the applicant in replying to the filed bill of costs, raised three limbs of objections which were argued by way of a written submission, however, its decision was never given or made known to the parties. He referred to the case of **Nemes Ngowi** (supra) where the reason for decisions was never given and so court lacked jurisdiction. He further argued that once the preliminary objection is raised, the court has to dispose of the said preliminary objection first or else any subsequent steps are misplaced. that was all in submission in chief.

The respondent's reply to the applicant's written submission started by historical background and then he argued the grounds raised. The

respondent's submission geared with the third ground concerning the raised preliminary objections which was disposed of by way of written submissions. It is the respondent's submission that the taxing master considered the arguments concerning preliminary objection before he conducted taxation. The taxing master having found that the preliminary objection has no leg to stand he went on to tax the costs of both the District Land and Housing Tribunal as well as the High Court as he had the jurisdiction to do so because the matter originated from the District Land and Housing Tribunal and finalised at the High court the fact which was misconceived by the applicant.

That, it is true that the District Land and Housing Tribunal has the power to execute its own decree, however, the circumstances, in this case, are different. That, as the Misc. Application No. 224 of 2017 was filed to apply for leave to challenge the same award that arose in District Land and Housing Tribunal, it was obvious that, it was the continuation of challenging the District Land and Housing Tribunal decision and thus it facilitated the room of claiming bill of costs together with that of the District Land and Housing Tribunal.

The respondent's counsel insisted that, the taxing master did not close hands on the raised preliminary objection as he had gone through what was argued by both parties and found that he had a mandate to tax



the claim before him. That, the raised preliminary objection was argued by way of written submission and determined to its finality.

He went on to distinguish the case of **Sarajit Singh Bharya & Another vs NIC Bank Tanzania Ltd AND Another**, Civil Appeal No. 94 of 2017 on the issue of time-barred as the case at hand has different circumstances.

Respondent's counsel further submitted that, the taxing master was right as he scrutinized the application properly before giving his Ruling as it is the practice of law that, fees for drafting that appear before engaging or defending the case have to be taxed separately.

He finalised his submission by praying this court to dismiss the application with costs, as it has no merit since the taxing master had a mandate to tax the said bill of cost.

In his rejoinder, the applicant's counsel contests the application of Law of Limitation Act specifically section 21 as the Land Disputes Courts Act, Cap 216 R.E 2019 provides for the time limitation, and therefore the Law of Limitation does not act as an automatic extension of time as it was held in the case of **HTT Infranco Limited t/a Helio Towers Tanzania vs Juliano Charles Mkongomi & Another**, Land Appeal No. 25 /2020 High Court Iringa.

On the issue of the disposal of preliminary objection, the applicant's counsel argued that, the respondent is submitting mere words without proof of the date the decision on preliminary objections was pronounced. He further argued that, the taxing master taxed the costs that were abandoned as the respondent does not deny that. He also insisted that the taxing master had no jurisdiction to award costs that were granted in the District Land and Housing Tribunal as it was held in the case of **Msabwa Y. Songoro vs Victoria Savings & Credit Co-operative Society Ltd**, High Court Reference No. 2 of 2014. That, since orders for costs in the tribunal, was time-barred, and since the taxing master had no jurisdiction to entertain orders awarded from the tribunal, then the whole bill of costs ought to be dismissed with costs.

Applicant's counsel submitted on the issue of authenticity of the document relied upon in the bill of costs and costs themselves are questionable as the respondent's counsel did not negate and therefore their submission was impliedly admitted. He finalised his submission by praying the lower court proceedings to be set aside as the taxing master had no jurisdiction and the matter was time-barred. That marks the end of both parties' submissions.

Having gone through both parties submissions, I have only one issue to determine which is whether this application has merit.



After a careful consideration of both parties' arguments and having passed through the background of this application, it is my considered view that, I will start to determine the third ground as it appears in the chamber summons, that the Honourable Registrar failed to determine the preliminary objections raised first to finality before determining the bill of costs, because if this ground is allowed then it will suffice to dispose of this application.

It is the applicant's submission that, the taxing master failed to determine the raised grounds of appeal in Taxation Application No. 14 of 2018 as its decision was neither made nor made known to the parties. That, there was only one Ruling that awarded the costs to the tune of Tsh. 5,847,500/= which did not address the raised preliminary objections.

The respondent also agrees that there was a preliminary objections that was raised by the applicant herein. However, it is his argument that the raised preliminary objections that was argued by way of written submission was found to have no legs to stand and so it was considered by the taxing master before he carried on with the taxing.

I agree with the applicant's submission once a preliminary objection is raised, the court must determine it first, before going on with the matter. From the records, when the applicant filed this application, he only annexed one Ruling from Taxation No. 14 of 2018 dated 30/9/2020.



However, I went through the entire records including the records of Taxation No. 14 of 2018 and found that, the taxing master determined the raised preliminary objections through a Ruling that was delivered on 14/8/2020 before both parties as submitted by the respondent. Therefore, the applicant's argument that the taxing officer failed to determine the raised preliminary objections is baseless and vexatious, as the records reflect that both parties were present when the ruling on preliminary objections was delivered. After the Ruling was delivered on 14/8/2020, the Taxation Application was scheduled for hearing before the taxing master delivered its Ruling on 30/9/2020. Thus, this ground is dismissed.

I will now determine the second ground raised as to whether the Deputy Registrar failed to consider that, the instant court had no jurisdiction to tax the costs awarded by the District Land and Housing Tribunal. It is the applicant's assertion that the bill of cost in the District Land and Housing Tribunal was supposed to be filed in the District Land and Housing Tribunal as it has powers to execute its own decrees, citing the case of **Nsobi Mwaipungu**(Supra). I am inclined to agree with the Respondent's submission that, it was proper for the application for bill of costs to be filed in the High Court since the matter did not end at the District Land and Housing Tribunal as it was further prosecuted at the High Court to its finality.



It is a principle of law that an Application for bill of cost has to be filed where the matter was terminated, in which at our case at hand it was the High Court. The case of **Nsobi Mwaipungu**(supra) is differentiated from our case as, in that case, the court did not award such costs as the applicant failed to prove his claims. In the case of **Timothy Moshi vs Flavian Marandu & 9 Others**, Misc. Land Application No. 41 of 2020, HC Moshi, quoting with authority the case of **Maximillian Rwabulala vs Emilian Kalugala and Another** [1987] TLR 2, where the court held that;

"According to the Advocates' Remuneration and Taxation of Costs (Amendment) Rules, GN 89 and 159 of 1962 Cap 9 of the Applied Laws, the proper Taxing Master is the court where the case terminates. Since the case in point ended in the High Court the District Magistrate had no jurisdiction to conduct Taxation"

Therefore, the taxing master had jurisdiction to hear and determine the application for bill of costs filed before him. This ground is dismissed too.

On the first ground, the issue was whether the Honourable Deputy Registrar failed to consider that the Bill of Costs No. 14/2018 was time-barred, and was never proved as required. The applicant's main



argument was that, the bill of cost for the District Land and Housing Tribunal was time-barred since it was filed two years later. Bill of cost must indeed be filled in 60 days as it was decided in the case of **Dorin Rugalabamu** (supra) as cited by the Applicant. However, as submitted by the respondent that, the District Land and Housing Tribunal decision was challenged in the High Court which prevented the Respondent to file Bill of costs. As the matter was finalised, the Application for Taxation was filled right on time, as the decision in Misc. Land Application No. 224 of 2017 was delivered on 6th March 2018 and the Taxation Application was filed on 27th March 2018. Therefore, the application was filed on time and it was not time-barred.

Still, on this ground, the Applicant claims that, the bill of costs was never proved as required. In determining whether the bill of costs was proved as required, I will also be determining the 4th ground that, the Deputy Registrar awarded for the already abandoned costs. I would like to determine first if the Taxing master taxed abandoned costs. It is true that, the preliminary objection raised over Taxation Application No. 14 of 2018 was argued by way of written submission. And in arguing the raised preliminary objection, the Respondent prayed for the Taxing master to disregard the bill of costs in Land Application No. 175 of 2005 and to determine the bill of costs for Misc. Land Application No. 224 of 2017.



With that prayer, the respondent dropped his claims for bill of costs in the District Land and Housing Tribunal. However, the taxing master did not take into consideration that, the respondent had already dropped such claims and he went on to tax both costs from the District Land and Housing Tribunal and in the High Court.

The position of the law as it is provided for Order XXIII Rule 1(1) & (3) of the Civil Procedure Code, Cap 33 R.E 2019, provides for the party in a suit to be allowed to either withdraw or abandon part of his claim. That is to say, when the court is satisfied that there are reasonable grounds to do so, it may allow that party to do so. Failure of the Taxing master to consider such abandonment is fatal as the court cannot grant relief which is not desired by a party. This was also said in the case of **Chang Jian Investment Limited vs African Banking Cooperation (T)Ltd & 2 Others**, Land Case No. 7 of 2019, HC Mtwara. Therefore, I proceed to withdraw the bill of costs for the District Land and Housing Tribunal in Application No. 175 of 2005, to the tune of Tsh. 4,716,000/=, to quash and set aside the decision of the taxing master in Application No. 14 of 2018.

Now lastly, is whether bill of cost to the tune of 2,164,000/= was proved as required in respect of Misc. Land Application No. 224 Of 2017. From the decision of the taxing master in Application No. 14 of 2018, the

taxing officer taxed the instruction fee to the sum of Tsh. 1,000,000/= for the reason that it was a Miscellaneous Application. I agree with the decision of the taxing master that, taking into consideration that, it was a Misc. Application, it was supposed not to exceed a sum of 1,000,000/= as per Item 1 (m)(ii) of the Eleventh Schedule of GN 264 of 2015.

On attendance, the taxing master taxed as presented and I have no intention of disturbing the same as it is in accordance with item 3 (a) of Eight Schedule of GN 264 of 2015. Disbursements cost was rightly taxed to the tune of Tsh. 64,000/=. Therefore, the total amount is Tsh. 1,164,000/= that is the costs awarded to the Respondent.


In the final result, this Reference is allowed to the extent stated herein with no order as to costs.

It is so ordered.




M. MNYUKWA
JUDGE
11/07/2022

The right of appeal fully explained to the parties.


M. MNYUKWA
JUDGE
11/07/2022

Court: Ruling delivered this 11th July, 2022 in the presence of both parties.

A handwritten signature in blue ink, appearing to be 'M. Mnyukwa', written above the printed name.

M. MNYUKWA
JUDGE
11/7/2022