

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB-REGISTRY OF MWANZA**  
**AT MWANZA**

**MISC. LAND APPLICATION CASE NO. 123 OF 2021**

*(Arising from taxation of the Bill of costs No. 27 of 2020 in the High Court Mwanza sub-registry)*

**MUHONI KITEGE ..... APPLICANT**

**VERSUS**

**1. THE PRINCIPAL SECRETARY**

**MINISTRY OF ENERGY AND MINERALS..... 1<sup>ST</sup> RESPONDENT**

**2. THE ATTORNEY GENERAL..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*22<sup>nd</sup> June & 31<sup>st</sup> August, 2022*

***Kahyoza, J.:***

**Muhoni Kitege** (Kitenge) sued the Principal Secretary Ministry of Energy and Minerals and the Attorney General (the Respondents) claiming among other things, Tzs. 3 billion as compensation of unexhausted improvements and value. Kitenge lost the suit. The trial Court condemned him to pay costs.

Aggrieved, Kitenge lodged a notice of appeal to the Court of Appeal. The respondents on their part, instituted the bill of costs claiming Tzs. 4,460,000/=. The taxing officer taxed it at Tzs. 1,690,000/=.

Dissatisfied, **Kitenge** instituted reference proceedings to challenge the taxing officer's award. Kitenge raised four grounds of complaint in the application for reference as follows-

- 1) That the taxing officer erred in law to tax Tshs. 1,690,000/= after the applicant had issued Notice of Appeal to the Court of Appeal, which was duly served to the Respondents.
- 2) That the taxing officer erred in law to tax (the bill of costs) and order the applicant to pay Tshs. 1,690,000/= contrary to the decree of High Court, which awarded no costs to the Respondents.
- 3) That the taxing officer erred in law to award the Respondents items 2 to 26 transport costs without proof of traveling transport tickets thereof as the office of the Attorney General and the High Court are within the same building. High Court at the first floor and the Attorney General Chambers on the second floor.
- 4) That the taxing officer erred in law to entertain an application for Bill of costs when the applicant had filed before the High Court Misc. Application No. 88/2021 for stay of execution of the decree which is pending before the High Court.

Ms. Sabina Yongo, the State Attorney representing the Respondents opposed the application by filing a counter affidavit.

The application was heard orally. The applicant relied on his affidavit he did not have anything to add. The Respondents' State Attorney submitted that she prayed to adopt the counter affidavit and submitted. I refer to the Respondents' submission and the applicant's rejoinder while answering issues.

**Did the taxing office err to tax the bill of costs after the applicant lodged a notice of appeal?**

Kitege complained that the taxing officer erred in law to tax the bill of costs at Tzs. 1,690,000/= after he had lodged a notice of appeal to the Court of Appeal and served it to the Respondents.

The Respondents' state attorney submitted in opposition that Kitege did not prove that at the time of lodging or taxing of the bill of costs, he was not yet supplied with copies of judgment and proceedings. She added that the respondent did not attach a copy a letter requesting for copies of judgment and proceedings.

The issue for determination is whether the taxing officer erred to tax the bill of costs after the applicant lodged a notice of his intention to appeal to the Court of Appeal of Tanzania. The applicant did not cite any to support his contention that the taxing officer erred to tax the bill of costs

after he lodged a notice of appeal. I know no law that a notice of intention to appeal to the Court of Appeal stays taxation of the bill of costs. Item 4 of the **Advocates Remuneration Order**, G.N. No 263/2015 requires bill of costs to be filed within 60 days from the date of the order awarding costs. It states-

*"4. A decree holder may, within sixty days from the date of an order awarding costs, lodge an application for taxation by filing a bill of costs prepared in a manner provided for under Order 55."*

Once a decree holder files the bill of costs, I find no convincing reasons why the same must not be taxed. Whether the judgment debtor has appealed or not it is not a ground to stay taxation of the bill of costs. Costs are part of the decree. It was easy for the law governing taxation of the bill to state that after the bill of costs is lodged the taxing officer shall not tax the bill of costs if the judgment debtor has appealed or lodged a notice of appeal. It is silent. I find no legal bases to fault the taxing officer for taxing the bill of costs after the applicant lodged a notice to appeal and applied for copies of judgement and proceedings.

I am aware of the decision of the Court of Appeal in **Matsushita Electric Co. Ltd V Charles George t/a C.G. Travers**, Civil Appl.No.71 of 2001 (unreported) and many others that: -

*"Once a Notice of Appeal is filed under Rule 76 (now Rule 83 (1) of the Rules) then this Court ( the Court of Appeal) is seized of the matter in exclusion of the High Court except for applications specifically provided for, such as leave to appeal or provision of a certificate of law".*

The decision in **Matsushita Electric Co. Ltd** does not bar a decree holder to file and prosecute a bill of costs. The law provides that an intention to appeal or an appeal does stay execution of a decree. That is to say a decree holder may apply for execution of the decree after the judgment debtor not only lodged a notice of appeal but even after he lodged an appeal to the Court of Appeal. Costs are part and parcel of the decree. That is why when the judgment debtor applies for execution, one of the information required is whether the bill of costs has been taxed or not. The decree holder must indicate amount awarded as costs. Thus, taxation of the bills of costs makes the decree absolute. See rule 6(2) of Order XX of the **Civil Procedure Code Act**, [Cap. 33 R.E. 2019] (the CPC). It stipulates-

*(2) The **decree shall also state the amount of costs incurred in the suit** and by whom or out of what property, and in what proportions such costs are to be paid. (emphasis is added)*

As stated above, there is neither law barring taxation of the bill of costs after the judgment debtor filed a notice of appeal nor does it occasion injustice to do so. The judgment debtor submitted that he was appealing against the order awarding costs and that it might be reversed. It is obvious that when an appeal is lodged the Court of Appeal may quash the decree or reverse decree. That notwithstanding, the law permits a decree holder to execute the decree. The law provides that an appeal shall not apply as stay of execution. Costs are part and parcel of the decree. If the decree holder is entitled to execute a decree, there is no reason why he should not execute the decree in its totality that is after the bill of costs is taxed.

If the judgment debtor does not wish the decree including costs, to be executed, he must apply for stay of execution. After obtaining the order staying execution, the judgment debtor will have no reason to worry. There is no reason to get worried by taxation while the decree holder is left free to execute the decree, which might be more injurious than the taxed amount.

In fine, I conclude that the taxing officer did not err to tax the bill of costs while Kitege, the applicant had lodged a notice of appeal and applied for copies of judgement and proceedings.

### **Did the Court award costs?**

Kitege complained that the taxing officer erred in law to tax (the bill of costs) and order the applicant to pay Tshs. 1,690,000/= contrary to the decree of High Court. He contended that the High Court did not award costs to the Respondents.

The respondents' state attorney submitted that the trial court awarded costs in its judgement. She attached a copy of the judgment.

It is a true that the decree does not indicate costs were awarded, however, the judgement plainly states that the respondents (the defendants) were awarded costs. It reads "*the plaintiff in the main case is also condemned to pay costs of the suit to all defendants*". I find that the respondents were awarded costs. The law states that the decree shall agree with the judgment. This is provided under rule 6(1) of Order XX of the CPC, which states that-

*6.-(1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties*

*and particulars of the claim and shall specify clearly the relief granted or other determination of the suit.*

It is the findings of this Court that the trial judge omitted accidentally to state that the respondents (defendants) are awarded costs in the decree. It was a slip of pen. An accidental mission of relief(s) in the decree cannot be the bases of denying the decree holder what the judgment awarded him. The decree must be amended to include all reliefs awarded. I do not find any miscarriage of justice for the decree holder to enforce what the judgment awarded him though it was not included in the decree. Before the principal of overriding objective became part of our laws, I would have been tempted to strike out the bill of costs and order the decree to be amended before the bill of costs is filed. I am of the view that to do so will not serve any one's interest but it will make parties suffer unnecessary costs. Since the judgment awarded costs, the decree holders are entitled to costs despite the decree omitting them.

**Was the award justifiable without evidence to proof expenditure?**

Kitege complained that the taxing officer erred in law to award the Respondents items 2 to 26 transport costs without proof. He submitted that the Respondents' state attorney had their office in the same building



from where the High Court was allocated. He deponed that the High Court was located at the first floor and the Attorney General Chambers on the second floor.

The respondents state attorney submitted that costs of transport are awarded as per the scale provided under item 23(a) of the Advocates Remuneration Order. There was no reason for them to produce proving transport costs by tendering receipts.

The **Advocates Remuneration Order**, G.N. No 263/2015 provides scales for taxing the bill of costs and requires bill of costs to be taxed at prescribed scale. It paragraph 46 states-

*46. All bills of costs shall be taxed on the prescribed scale, unless a Judge of the High Court, for special reasons to be certified, allows costs in addition to the costs provided by the scale or refuses to allow costs or allows costs at a lower rate than that provided by the scale.*

The scale provided for attending the court for hearing for the first 15 minutes is Tzs. 50,000/=. It means if a party attends court either for hearing or otherwise and spends not more than 15 minutes his entitlement is Tzs. 50,000/=. It is distant matter if that party travelled or not. See item 3 (though it named 23) of the Eight Schedule to the **Advocates**

**Remuneration Order.** Thus, the determinant factor is time spent and not the purpose of attending court or the distance covered or costs incurred to attend the Court. The respondents are entitled to costs for attending the Court even though they occupied the same premises with the Court. I, therefore find that the applicant's argument that the respondents are not entitled to costs for attending the court for failure to prove that they travelled is meritless.

**Was taxation of bill of costs when there was a pending application for stay an error in law?**

I will not dwell on the applicant's complaint that the taxing officer erred in law to entertain an application for Bill of costs when he had filed before the High Court Misc. Application No. 88/2021 for stay of execution of the decree which is pending before the High Court. The applicant did not stipulate the law which bars the taxing officer to tax the bill of costs after an application for staying execution is filed. I also, know no law to that effect. A bill of costs may be taxed despite the fact that the application for stay of execution is filed. What is injurious and poor case management, is to order execution of the decree when there is a pending application for stay of the execution. I find no merit in the applicant's argument.

In the end, I find the reference without reasonable ground for complaining. Consequently, I dismiss the reference and uphold the taxing officer's award Tzs. 1,690,000/=.

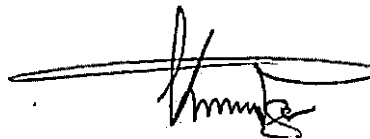
It is ordered accordingly.

**DATED at Mwanza** this 31<sup>st</sup> day of August, 2022.



  
**J. R. Kahyoza**  
**JUDGE**

**Court:** Ruling delivered in the absence of the parties duly notified. The applicant left the Court to attend another matter at Musoma fixed on the day after and the respondents' state attorney was absent attending a meeting. B/C Ms. Jackline (RMA) Present.



**J. R. Kahyoza**  
**JUDGE**  
**31/8/2022**