

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA  
LAND REFERENCE NO. 03 OF 2021  
(From Rungwe District Land and Housing Tribunal  
Bill of Cost No. 77 of 2016)**

**ATUGANILE R. MWASEBA.....1<sup>ST</sup> APPLICANT  
GWAKISA MWAKAGILE.....2<sup>ND</sup> APPLICANT  
ASAGWILE MWANGOMALE.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY COMPANY (TANESCO).....1<sup>ST</sup> RESPONDENT  
KYELA DISTRICT COUNCIL.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date: 7<sup>th</sup> & 30<sup>th</sup> June, 2022*

**KARAYEMAHA, J**

By way of Chamber summons filed on 18/08/2021 supported by an affidavit sworn by learned Justinian Mushokorwa, counsel for the Applicants, this court is hereby moved to grant the following orders:

- (a) A reference be made to a JUDGE to correct the ruling of Hon. A.J. Majengo chairman of DLHT/Taxing master dated 05/04/2018.
- (b) Cost be provided for.
- (c) The bill be remanded back to the DLHT For taxation.

The reference has been vehemently contested by the respondents through the counter affidavit sworn by Florence A. Kahatano and Kelvin Daniel Kisayo.

The etymology of this matter is very simple and easy to comprehend. It is that, the Applicants filed Misc. Application No. 77 of 2016 in the District Land and Housing Tribunal for Rungwe (DLHT) being application for bill of costs. Mr. Kelvin Kisayo the 2<sup>nd</sup> respondent's learned counsel, raised a point of preliminary objection (the PO) to the effect that the matter was barred in law for contravening the Advocates Remuneration Order, GN No. 264 of 2015 (hereinafter GN No. 264), specifically Order 55 (3). No sooner the PO was raised than the trial Chairman ordered the application to be amended. Contrary to the order of the DLHT, the applicant in the present application refilled a similar application for bill of costs tainted with similar defects. Undisputedly, the applicants in their amended bill of cost included the taxation cost as per item 1 (b) instruction to file and prosecute bill of cost and taxation also in item 5 (c) the fees for attending taxation which were not to be included in the bill of cost. After considering the PO, the Taxing Officer struck out the application with no orders to costs. The applicant's counsel was aggrieved by that decision hence approached this court for reference having the following grounds in paragraph 2 of his Affidavit;

1. That, the Taxing Officer erred to struck out the entire bill of costs consisting of 5 items instead of expunging out item, 1 (b) and 5 (c) the subject of objection.
2. That the objection raised by counsel for 2<sup>nd</sup> respondent did not measure to a preliminary objection at law.

The reference was argued by way of written submissions. Mr. Justinian Mushokorwa, learned counsel represented the applicants and on the other side the respondents were represented by Mr. Kelvin Daniel Kisayo.

Mr. Mushokorwa commenced his submission by complaining that his client's Bill of costs No. 77 of 2016 was dismissed on 20/4/2018. Upon going through the ruling he attached on the affidavit sworn by himself, and paragraph 1 of the supporting affidavit, it is indicated that the bill of costs was struck out on 20/04/2018. Therefore, there is no ruling dismissing the bill of costs attached to the affidavit.

Leaving that alone, in his submission Mr. Mushokorwa argued that having detected the offending items, the Taxing Officer was not to struck out the entire bill consisting of 5(a) – (d) items which were blame free but to expunge them. The learned counsel is imploring this court to correct the ruling of the DLHT and order a fresh taxation by another chairman and seems to promise not to include fees for taxation.



In his reply, Mr. Kisayo notified this court that the applicants were given an opportunity to amend their application but ignored. When they returned a bill of costs with similar mistakes and after hearing both parties on PO, the Taxing Officer struck out the entire bill of cost. The learned Counsel was not happy with the conduct of Mr. Mushokorwa of abusing the court process instead of acting with honest, condor and competence. He was aggrieved further with Mr. Mushokorwa's conduct of misleading the court. Having said so, he asked this court to strike out the reference with costs.

In consideration of the instant matter, the issue is whether the only way to challenge the Taxing Officer's striking out order is to prefer a reference to a judge. The learned advocates did not address their minds to this issue. I find myself constrained to discuss it. Mr. Mushokorwa's prayer is not calculated to involve this court in taxing the bill of costs but ordering the same be done by a different Chairman. This is in consonance with the trite position that the quantum of the costs awardable to the applicant is determined by the Taxing officer exercising his original jurisdiction on that aspect. I, therefore, agree with him because the Taxing master had not decided anything in respect of which reference could be preferred. This position was contemplated by my sister Ebrahim J in the case of **Benjamin Mwakyala vs. Geoffrey A. Ndalanda**, Land Reference No 6 of 2020 (HC) at Mbeya. My Brother Mkeha, J travelled in the same path when he was

answering the issue whether the only way to challenge the Taxing Officer's dismissal order is to prefer a reference to a judge in Reference No. 7 of 2021, **Salumu Suleiman Ally vs. Diamond Trust Bank Tanzania LTD.** In the instant matter, the bill of costs filed in the Rungwe DLHT was simply struck out for being incompetent. I also hold that, the application for reference in respect of a Taxation Cause that was struck out without having been taxed in the manner explained hereinabove is unmaintainable.

Considering the order striking out an application, it is a principle that since the Taxing Master did not make any order refusing or awarding costs he did not close the applicants door to go back to the same DLHT. Therefore, applicants can properly lodge competent application threereat.

It is for the foregoing reasons, I hold the present application to be incompetent. Since the aspect of maintainability of the application suffices to dispose of the matter, I shall not proceed determining the second ground of reference. The application for reference is struck out without costs for the reasons of incompetence. It is so held.

DATED at **MBEYA** this **30<sup>th</sup>** day of **June, 2022**



A handwritten signature in black ink, appearing to read 'J. M. Karayemaha', is written over a horizontal line.

**J. M. KARAYEMAHA**  
**JUDGE**