

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

LAND REFERENCE NO. 04 OF 2020

(Arising from Misc. Application No. 44 of 2017 in the District Land and Housing Tribunal for Singida at Singida)

HASSAN H. MUNDA APPLICANT

VERSUS

MWANTANDU GHULIKU..... RESPONDENT

RULING

28/04/2022 & 23/06/2022

KAGOMBA, J

HASSAN H. MUNDA has moved to this Court to make reference to the proceedings and order of the Taxing Master in Application No. 44 of 2017 before the District Land and Housing Tribunal for Singida (hereinafter "Singida DLHT") in order to satisfy itself as to the correctness, legality and propriety of the order of the Taxing Master. The applicant further applies for costs and any other relief this Court shall deem fit to grant.

The applicant made this application pursuant to Order 7(1) &(2) of the Advocates Remuneration Order, 2015, GN No. 265 of 2015, (hereinafter referred as "the Remuneration Order"). When this matter was scheduled for hearing the applicant enjoyed the service of Mr. Francis Kesanta, the learned advocate and the respondent MWANTANDU GHULIKU appeared in person and fended himself.

During hearing Mr. Kesanta prayed the Court to adopt the supporting affidavit attached to the application. He told the Court that the main reason for the applicant's application is stated under paragraph 9 of the affidavit. According to the referred paragraph 9 of the affidavit, the applicant avers that the decision of Singida DLHT in Misc. Land Application No. 44 of 2017 contains issues which need to be addressed by this Court. Three issues have been mentioned as follows;

- i. The decision contains bill of costs for two different cases, that is, Misc. Land Application No. 2 of 2016 and Misc Land Application No. 38 of 2016,
- ii. There is no order for costs in Misc. Land Application No. 4 of 2016 and
- iii. The respondent did not prove his alleged bill of costs.

Mr. Kesanta expounded the above raised issues by submitting that it was not proper for the Singida DLHT to join bill of costs for two applications. He argued that if those costs really existed, they were supposed to be separated.

He also submitted that there was no order for payment of costs in Misc. Application No. 4 of 2016, yet the same was joined in the ruling for bill of costs. He argued that since there was no order granting costs in the ruling, executing such costs was not proper in law.

Mr. Kesanta further stated that the costs mentioned in the ruling of Singida DLHT were not proved by the respondent as he ought to have submitted receipts. For these reasons he prayed the Court to grant the

application and quash and set aside the decision of the Taxing Master of Singida DLHT.

Mr. Mwantandu Ghuliku, the respondent, on his part told the Court that he has filed a counter affidavit to oppose the application vehemently. He submitted that all the attachments had been submitted to the Chairman of Singida DLHT, that is why the Tribunal decided in his favour basing on exhibits.

Mr. Kesanta rejoined briefly by maintaining his submission in chief.

Having heard both parties, there are three issues to be determined by this Court as follows;

1. Whether it was proper in law for Singida DLHT to join bill of costs of two different applications.
2. Whether there was no order for costs granted in Misc. Application No. 4 of 2016 and if the answer is in the affirmative, whether it was proper for the Singida DLHT to award costs in absence of such order.
3. Whether the costs awarded by Singida DLHT were proved.

In determining the first issue, there is no dispute that the Singida DLHT in Misc. Land Application No. 44 of 2017 joined two bills of costs, one originating from Misc. Land Application No. 04 of 2016 and another from Misc. Land Application No. 38 of 2016. Misc. Land Application No. 04 of 2016 was filed by the respondent at Singida DLHT to execute the judgment of Mangónyi Ward Tribunal while Misc. Land Application No. 38 of 2016 was

filed by the applicant seeking extension of time to file his appeal out of time. Basically, the two were different applications but involved the same parties.

It is a general principle in Courts' practice that each case has to be filed and determined on its own. However, it has also been a practice of Courts in our jurisdiction to consolidate related cases where expediency so demands, if the consolidation will not defeat the ends of justice. The holding of this Court by my learned brother Hon. Mackanja, J. (as he then was) in an application to join several civil cases in **Cooperative and Rural Development Bans V. Filton (Tanzania) Ltd** (1993) TLR 284 stated that;

'I do not see in that desirability an implied condition that the defendants are also barred from applying to the Court for an order that the several claims against them, if they be of the same nature, be consolidated.'

'Since an application to consolidate the several civil cases does not affect the merits of the claim against the defendants, it will be expedient that the defendants be heard if they can show sufficient cause.'

Also, in **Transport Equipment Ltd V. Valambhia** (1992) TLR 182 the Court of Appeal approved the consolidation of two applications by stating;

'We think with respect, to refuse to consolidate will be to fragment the process and delay the outcome. We are satisfied that to consolidate would be the better course in the circumstances, and we so order.'

With the above cited cases, it is very clear that the choice of Singida DLHT to join the two applications is not bad in law since there is no dispute

that the two bills of costs are of the same nature and involved the same parties. Most importantly no injustice was occasioned by the decision of the Singida DLHT. Since Mr. Kesanta had not stated before this Court that the consolidation of the two bills of costs prejudiced the applicant, the first issue is answered in the negative.

I should add that consolidation may be applied for by the parties but can also be done by the Court *suo motu* if the Court finds reasons to do so.

Coming to the 2nd issue, upon perusal of records, it is clear that in the ruling of the Singida DLHT in Misc. Land Application No. 4 of 2016 there is no order for costs awarded. The last two paragraphs of the ruling states as follows;

'All in all I find no reason to deny the applicant's/ decree holder's application prayer of being Tshs.4,757,500/= upon the judgment debtor failing to challenge the same within reasonable time if he had good grounds to do so.

Order accordingly'.

Similarly, the Drawn Order states;

'THIS TRIBUNAL *find no reason to deny the applicant's prayer as the respondent never challenged the same within reasonable time granted by law. The applicant to be awarded a total sum of Tshs.4,757,500/= forthwith as prayed by him and as ordered by the Ward Tribunal Mangónyi'.*

From the above excerpts, there is no dispute that the Tribunal never awarded costs to the respondent in the said application. Without an order for costs being awarded, the Court has to answer whether it was proper to award costs to the respondent?

The provision of Section 4 of the Remuneration Order which governs applications for taxation provides;

*'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'. [Emphasis added]*

The cited provision implies that where a decree holder is not awarded costs, he is prevented from applying for taxation. In **Malibwa Mgomya V. Mageza Nyabhaja**, (PC) Civil Appeal No. 40 of 2020, High Court, Musoma correctly stated that;

*'It follows that an application for taxation of a bill of costs can only be lodged by a person whom the Court ordered in favour the costs of the case. Unless there is a specific order as to costs, the taxation of costs cannot arise or be carried out. This position was stated in **DB Shaprya and Co. Ltd Vs Regional Manager TANROADS Lindi**, Civil Reference No. 1 of 2018, CAT at Dar es Salaam (unreported), when the Court of Appeal held that: I would reiterate my earlier position that for the reasons of allocation costs to one party against the other grants a benefit to the former and correspondingly imposes a liability of the latter, **such an award must be made specifically and explicitly in the final disposal order**, upon the basis of the principle discussed earlier'. [Emphasis added]*

Therefore, the second issue is answered in affirmative that the Taxing Master in Singida DLHT was wrong to admit bill of costs in Misc. Land Application No. 4 of 2016 and later award the same without an order granting such costs. For this reason, the Court invokes its revisionary powers under the Land Disputes Courts Act, [Cap 216 R.E 2019] to struck off the costs so illegally awarded. Accordingly, the costs awarded by Singida DLHT in Misc. Land Application No 4 of 2016 are hereby struck off.

The last issue is whether the costs were proved by the respondent. Since the costs of Misc. Land Application No. 4 of 2016 are to be deducted, the costs in Misc. Land Application No. 38 of 2016 shall prevail because there is no dispute that costs were awarded to the respondent by the Singida DLHT in the latter scenario. Mr. Kesanta is of the view that the same were not proved for failure of the respondent to produce receipts.

To determine this issue, I am guided by the principle of law that the determination of an amount of bill to be taxed is discretionary matter. This was illustrated by the Court of Appeal of Tanzania at Dar es salaam in **Tanzania Rent a Car Limited V. Peter Kimuhu, Civil Reference No. 9 of 2020**. The Court of Appeal stated as follows;

'....., it is a general rule that the award of instruction fees is peculiarly within the discretion of a taxing officer and the Court will always be reluctant to interfere with his decision, unless it is proved that the taxing officer exercised his discretion injudiciously or has acted upon a wrong principle or applied wrong consideration'.

In the matter at hand, there is no any claim made against a Taxing Master that he acted injudiciously as far as Misc. Land Application No. 38 of 2016 is concerned. However, for purposes of reassessing the bill taxed, I am duty bound to start by deducting illegally awarded costs in Misc. Land Application No. 4 of 2016 being item 1 to 15, 69 & 71 with a total sum of **Tshs. 226,000/=**, and remain with a total of 1,063,000/=.

In further reassessing the bill taxed, I have found from records that the respondent produced documents to prove his claims as stated by the Taxing Master. He produced bus tickets of various dates together with the receipts for obtaining ruling and drawn order. This means, the claim by Mr. Kesanta that there was no proof of costs is without a solid base as he has not pointed out exactly which kind of proof he was referring to.

In addition, there is nowhere in the records where Taxing Master required production of receipts and the respondent failed to furnish the same. Order 58 of the Remuneration Order states that receipts or vouchers for all disbursement shall be produced at taxation only when required by the Taxing Master. The said Order 58 provides;

*'58.-(1) Receipts or vouchers for all disbursements charged in a bill of costs (other than witness allowances and expenses supported by a statement signed by an advocate) shall be produced at taxation **if required by the taxing officer**.' [Emphasis added]*

Besides, it is not claim of costs a receipt has to be produced to prove it. There are others costs which the taxing Master can reasonably grant without receipt or other documentary evidence. In **Hotel Travertine Ltd**

V. National Bank of Commerce, Taxation Civil Reference No. 9 of 2006 the Court of Appeal stated that;

'This claim too was taxed off, because there was no receipt attached. That amount I think is reasonable and there can hardly be a receipt unless one went to the Court by a taxi. But if one uses one's car that can be difficult to account with a receipt

Also, In **Premchand Raichand Ltd And Another V. Quarry Services Of East 8 Africa Ltd And Others (No.3) [1972] 1 E.A. 162** four principles were made on taxation of bill of costs that;

*'(a) costs be not allowed to rise to such a level as to confine access to the Courts to the wealthy, (b) that a successful litigant ought to be fairly reimbursed for the costs he has had to incur, (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and (d) that so far as practicable there should be consistency in the awards made'.
[**Emphasis added**].*

From the above holdings, it is clear that production of receipts is not so much emphasized to prove a bill of costs. The Taxing Master has to ensure that, the costs taxed are reasonable and conform with the charges and expenses incurred.

Having reassessed the costs taxed in the Misc. Land Application No. 38 of 2016, I am of opinion that the same are reasonable as they constitute transport costs, meals expenses and accommodation which are necessities. In my view the costs taxed is not excessive. Even the, legal fees for preparation of legal documents have conformed with the scale under the

Remuneration Order. That being the case, I find no need to interfere with the Taxing master on bill taxed on Misc. Land Application No. 38 of 2016 serve for costs for attending Taxation Cause.

The Remuneration Order is very clear that costs emanating from Taxation Cause be filled in by the Taxing Master and not the applicant, as it appears in the bill of costs. This refers to costs on 2nd April, 2017(item 64 & 65) and 3rd April 2017(item 66 & 67). This Taxation Cause was filed on 31st March, 2017. Order 55(3) of the Remuneration Order states;

'Fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion by the taxing officer'.

For this irregularity, I would interfere with the Taxing Master and deduct costs for 2nd April, 2017 and 3rd April 2017 with a total of Tshs. 55,000/= from Tshs. 1,063,000/= which remained after deducting costs in Misc. Land Application No. 4 of 2016 as stated herein above. Therefore, there shall remain only Tshs. 1,008,000/=. Thereafter I proceed to fill in the blank on item 68 which the Taxing Master left unfilled, by filling Tshs. 636,000/= to include transport costs from Arusha (Tshs. 15,000/=), meals expenses (Tshs. 13,000/=) and accommodation (Tshs. 10,000/=) for 12 days which the respondent attended the Taxation Cause. In final analysis the total bill is Tshs. 1, 644,000/=.


Based on the above discussion, this reference is partly merited to the extent explained above. Hence, the bill is accordingly reassessed and the respondent is awarded a total sum of shillings One million six hundred forty

four thousand only (Tshs. 1,644,000/=). In order to discourage endless litigations, I give no orders to costs.

It is so ordered.

Dated at **Dodoma** this **23rd** Day of **June, 2022**.




ABDI S. KAGOMBA
JUDGE