

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

**AT BUKOBA**

**LAND REFERENCE NO. 01 OF 2022**

*(Arising from Misc. Civil Application No. 55 of 2021, Taxation Cause No. 13/2019 of the high Court and  
Originating from Misc. Land Case Application No. 61/2016)*

**AHMAD KHALFAN.....1<sup>ST</sup> APPLICANT**

**LEONARDA ANGELO.....2<sup>ND</sup> APPLICANT**

**WARD EXECUTIVE OFFICER NSHAMBA WARD.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**IBRAHIM MAHYORO.....RESPONDENT**

**RULING**

*Date of Ruling: 26.08.2022*

*Mwenda, J.*

The applicant being dissatisfied by the decision of Taxing Officer in Taxation Cause No. 13 of 2019 filed the present Land Reference with the aim of examining the correctness of the said decision. This application is brought under section 7(1) & (2) of the Advocate Remuneration Order GN 263 OF 2015 supported by the applicant affidavit.

During the hearing of this application the applicant was represented by Mr. Pontian Mujuni while the respondent hired the legal services from Ms. Johanitha Jonathan, learned counsel.

During his submission in chief, Mr. Mujuni begun with a prayer to have his affidavit adopted to form part of his oral submissions. He stated that the taxing officer erred when he sustained the preliminary objection raised by the respondent that Taxation Cause No. 13 of 2019 was filed out of time.

He said they filed the said Taxation Cause on 8/7/2019 within time because its ruling in Misc. Land Case Application No. 01/2016 was delivered on 8/5/2019. He submitted that by counting from the date of ruling to the date of filing of the said Taxation Cause, it is 61 days. He added in that in Taxation Cause the applicant is required to file application within 60 days as stated in the Advocates Remuneration Order GN. 263 of 2015.

He further submitted that, they delayed to lodge their application for one day only as the last day for filing the said Taxation Cause was 7/7/2019 which was a public holiday. In support to this point, he cited section 19(6) of the Law of Limitation Act [Cap 89 RE 2019].

He therefore prayed this court to reverse the decision of taxing officer dated 22/6/2021 to pave way for the hearing of Taxation Cause to proceed.

In reply to the submissions by the learned counsel for the applicant, Ms. Johanitha, also begun with a prayer to have her counter affidavit adopted to form part of her oral submissions.

The learned counsel submitted that, there is no merits involved in this application. She said the ruling in Misc. Land Case Application No. 6/2016 was delivered on 8/5/2019 in favor of the applicants by awarding them costs. However, the applicant filed Taxation Cause No. 13/2019 on 9/7/2019 which was 63 days, from the date when the said ruling was delivered. She said that the applicants were late for three days as the time to file the said Taxation Cause expired on 6/7/2019 which was on Saturday. To support her arguments, she cited the case of REGISTERED TRUSTEE OF CCM AND ANOTHER VS. PASKAZIA RWEBANGIRA, LAND CASE APPEAL NO. 34 OF 2012 (unreported).

She thus concluded her submissions praying this application to be dismissed.

In rejoinder Mr. Mjuni, submitted that they still insist that they were late for only 1 day after receiving the copy of ruling but from the date of ruling they were late for 3 days and the last day for filing was on 6<sup>th</sup> July 2019 which was on Saturday. He further submitted to the effect that on that day the court was closed and resumed on the Monday which was 8<sup>th</sup> July 2019. When the documents were filed. He concluded his rejoinder repeating to his previous prayer that this court be pleased to grant their prayers because they filed their Taxation Cause on the date when the court resumed duties.

Having gone through submissions by the learned counsels the issue for determination is whether or not this application is meritorious.

In the present application the applicants invited this court to examine the correctness of the decision by Taxing officer who dismissed Taxation Cause No. 13 of 2019 on the ground that it was filed out of time.

It is the requirement of the law, under Order 4 of the Advocate Remuneration Order GN 263 of 2015 that a party wishing to file application for bill of costs has to do so within 60 days from the date of order awarding costs. This order reads as follows that;

*"A decree holder may within 60 days from the date of an order awarding costs lodge an application for taxation by filing a bill of costs."*

In the present matter the records shows that Taxation Cause No. 13 of 2019 was filed on 9<sup>th</sup> July 2019 and the exchequer receipts in that regard was issued on the same date (i.e. 9<sup>th</sup> July 2019). It was the applicant's submissions that they delayed to file their application for bill of costs for only one day and the reason for the delay is that the last day of filing the said Taxation cause was a public holiday [i.e. 7/7/2019]. They said for that matter the Taxing officer erred in law to sustain the preliminary objection raised by the respondent.

It is true that the law excludes the period of limitations falling on the days when the court is closed. This is provided for under the Law of Limitation Act [Cap 89 R.E 2019]. Section 19 (6) of the Act provides that;

*"Where the period of limitation prescribed for any proceeding expires on a day when the court in which such proceeding is to be instituted is closed, the proceeding may be instituted on the day on which the court reopens."*

By simple mathematics, from the date of order which awarded the applicants costs i.e. 8/5/2019, sixty (60) days expired on 6/7/2019 which was Saturday. Guided by section 19(6) of [Cap 89 R.E 2019], since 60 days expired on 6/7/2019, then the applicants ought to have filed their application on the date when the court resumed, which is the Monday of 8/7/2019. However, the applicant filed Taxation Cause on 9/7/2019 when they were already time barred. The taxing master was then correct when he dismissed the applicant's application.

From the foregoing observation this court finds no merits in this application and it is hereby dismissed. The decision in Taxation Cause No. 13 of 2019 Court is hereby upheld.

Each party shall bear its own costs.

It is so ordered.



  
A.Y. Mwenda

**Judge**

26.08.2022

This ruling is delivered in chamber under the seal of this court in the presence of Mr. Ponsian Mujuni the learned counsel for the applicant and in the presence of the respondent Mr. Ibrahim Mahyoro.



  
A.Y. Mwenda

**Judge**

26.08.2022