

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

CIVIL REFERENCE NO. 01 OF 2022

(C/F from High Court Taxation 83/2019, Originating from Land Case No. 75/2017)

CALIST ALOYCE MASSAWE..... 1ST APPLICANT

SENKUNDA CALIST.....2ND APLICANT

VERSUS

KIJENGE SACCOSS.....1ST RESPONDENT

MANG'WEMBE 2011 CO. LTD.....2ND RESPONDENT

ABEL LOREU KING'ORI.....3RD RESPONDENT

RULING

15.08.2022 & 08.09.2022

MWASEBA, J.

The applicants herein having been dissatisfied with a ruling of the Deputy Registrar, Hon. R. B Massam, in the Taxation Cause No. 8 of 2019 which was delivered against the applicant herein on 15/1/2021, lodged the present reference moving this Court to interfere and vary the said decision of the Deputy Registrar. The application is made under Order 7(1) and 7 (2) of **the Advocates Remuneration Order**, GN 264 of 2015 made


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under Section 49 (3) of **the Advocates Act**, Cap 341 R.E 2019. It was supported by a joint affidavit of the applicants.

When the application was called for mention on 27/06/2022, the parties prayed to conduct the hearing by way of written submission and their prayer was granted. Mr E.F Mbise, learned advocate represented the Applicants whereas Mr Sylvester S. Kahunduka, learned advocate represented the 3rd respondent. Mr Mallya learned counsel appeared for the first respondent but he was later excluded from the proceedings as it was agreed by the parties that his client was not a party to the ruling which is subject to this reference. The 2nd respondent had never appeared in court as the counsel for the applicant clarified in court that his case was against the 3rd respondent only.

Arguing in support of the application, the counsel for the applicants raised the following grounds to challenge the decision of the taxing master as follows:

- i) *That, the said ruling was premature and against the principle of "Stare Decisis"*
- ii) *That the parties in land Case No. 75 of 2017 are at variance with the parties in Taxation Cause No. 83 of 2019.*



He submitted further that the ruling of the taxing master was premature and against the principle of "*Stare Decisis*" because the applicants already filed a Notice of Appeal to the Court of Appeal on 30/10/2019 and it was accompanied by a letter requesting for copies of documents required for the appeal. Thus, it was wrong for the court to proceed with the hearing of the bill of costs while a notice has already been filed. He cited the case of **Mtsushita Electric Co (EA) Ltd Vs Charles George t/a as G.G Traders**, Civil Appeal No. 71 of 2001 (CAT-Unreported) and **Mohamed Enterprises Tanzania Ltd Vs the Chief Harbour Master and the Tanzania Ports Authority**, Civil Appeal No. 24 of 2015 (CAT-Unreported) where the Court of Appeal held that once a notice of appeal has been filed, the jurisdiction of the High Court ceases. It was his further submission that the respondents were supposed to apply to the CAT for the Notice of Appeal to be struck out before proceeding with the hearing of the bill of costs.

Concerning the second ground for reference, Mr Mbise submitted that parties in land Case No. 75 of 2017 are in variance with the ones in Taxation Cause No. 83 of 2019. In Land Case No. 75 of 2017 the 3rd respondent is named as Abel Lorfuke Ng'ori and in Taxation Cause No. 83 of 2019 he was named Abel Loreu King'ori. The 3rd respondent's counsel

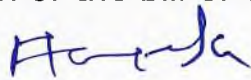
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was supposed to correct the said clerical errors before lodging the application for bill of costs. They prayed for the decision of taxing master be quashed and the order be set aside with costs.

Replying to the first ground, Mr. Kahunduka stated that the taxing master was right to determine the bill of costs as nothing barred her to determine the same. To support his point, he cited the case of **DRTC Trading Company Limited Vs Mexison's Investments Limited**, Misc. Commercial Application No. 190 of 2021 (Unreported).

Responding to the issue of variance on the name of the 3rd respondent, Mr Kahunduka argued that it was just a misplacement of letters which can be cured by the principle of overriding objective and did not occasion any injustice to the applicants. He prayed for the reference to be dismissed with costs.

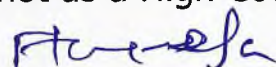
Having heard the submissions from both learned counsels and going through the record, I am in the considered view that the first point suffices to dispose of this reference. It is not disputed that there was a notice of appeal which was filed to the Court of Appeal with regard to the ruling in Land Case No 75 of 2017. The only issue is whether the existence of the Notice of Appeal can bar the determination of the bill of costs before the High Court.



Considering the submission of Mr Mbise learned counsel, I agree that whenever a Notice of Appeal has been filed to the Court of Appeal, the jurisdiction of the High court ceases except for the application provided for. This position has been repeatedly elaborated by the Court of Appeal in the case of **Matsushita Electric Company (E.A) LTD Vs Charles George t/a as G.G Traders**, (Supra) which was cited with approval in the case of **Mohamed Enterprises Tanzania Limited Vs The Chief Harbour Master and The Tanzania Ports Authority**, (Supra) it was states as follows:

*"Once a Notice of Appeal is filed under Rule 76 [now Rule 83 (1) of the Rules] then this court 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**". (Emphasis is mine)*

From the above authority, it goes without saying that an application for Bill of costs is not among the applications which the High Court can proceed to determine when the Notice of Appeal has been filed to the Court of Appeal. Mr Kahunduka cited case of **DRTC Trading Company Limited Vs Mexison's Investments Limited** (supra) to support his submission that the Taxing master was not barred to determine the Bill of costs as she set as a Taxing master and not as a High Court. With due

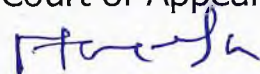


respect, this case is distinguishable from the facts at hand. In the cited case the applicant was seeking for extension of time to file Bill of Costs. And the reasons for delay was the existence of a Notice of Appeal which barred the applicant to file Bill of Costs at the High Court. However, the honourable Judge did not entertain it and directed the application to be filed before the Taxing Master.

In the case of **Noman- Mahboub (T/A Noman Al Mahboub General Trading Corporation Vs Milcafe Limited**, Commercial Case No.41 of 2003 (Unreported) my learned brother Kimaro J (as he then was) had this to say:

"The Taxation proceedings, as the title shows, are before the High Court. Since a notice of appeal has been issued, the jurisdiction of the High Court has ceased. Taxation is not a matter which has been specifically allowed to proceed even after issuance of a notice of appeal to the Court of Appeal."

I am well persuaded by the foresaid position. The ruling of the Taxing master which is subject for this reference is titled *"In the High Court of the United Republic of Tanzania."* That means the Taxing master was not allowed to proceed with the determination of application for bill of costs while there was a Notice of Appeal filed at the Court of Appeal.



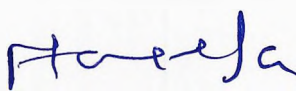
Having noted that when a Notice of Appeal has been filed at the Court of Appeal the High Court ceases to have jurisdiction to determine bill of costs, I concur with Mr Mbise for the applicant that the Taxing master erred in determining the same. And so long as the application was filed pre matured there is no need to determine the second point as to the variance of names in the Bill of Costs. The first point suffices to merit this reference.

In the upshot, I find the applicant's claims to have merit. The ruling by the deputy registrar in respect of Taxation Cause No. 83 of 2017 is hereby nullified and its associated order is set aside. I make no orders as to costs.

It is ordered.

DATED at ARUSHA this 8th day of September, 2022.




N.R. MWASEBA

JUDGE

8.09.2022