

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

AT BUKOBA

CIVIL REFERENCE NO. 03 OF 2022

(Arising from the Resident Magistrate Court of Kagera at Bukoba in Taxation Cause No. 5 of 2020)

**ST. MICHAEL PETER SECURITY CO. LTD APPLICANT
VERSUS**

**LAKE OIL L.T.D RESPONDENT
RULING**

Date of Ruling: 07.10.2022

A.Y. Mwenda, J.

The applicant being dissatisfied by the decision of Taxing Officer in Taxation Cause No. 05 of 2020 filed the present Civil Reference. This application is brought under section 7(1) & (2) of the Advocate Remuneration Order GN 263 of 2015 supported by the applicant affidavit. Under the chamber summons the applicant prays for the following orders and I quote;

- i) That this Hon. Court be moved and refer the bill of costs to Hon. Magistrate of Bukoba Resident Magistrate Court so as to be challenged. (sic)
- ii) That this Hon. Court be pleased to set aside the ruling and drawn order of the Resident Magistrate Court of Bukoba before J.E. Massesa as a taxing master.

- iii) To declare that the applicant was not responsible to pay the taxation cause. (sic)
- iv) The Civil Reference to be sustained. (sic)
- v) That the costs be provided for.
- vi) Any other relief (s) this honorable Court may deem fit and just to grant.

When the respondent was served with the Applicant's chamber summons and affidavit in counter thereof, they filed counter Affidavit with preliminary point of objection which reads as follows and I quote;

"This application is time barred"

It is trite law that once a preliminary point of objection is raised then such objection must be determined first before the hearing of the main case.

During the hearing of the said preliminary point of objection, the applicant appeared in person without legal representation while the respondent hired the legal services from Ms. Johanitha Jonathan learned counsel.

When invited to submit in respect of preliminary point of objection, Ms. Johanitha submitted that under Order 7 (2) of the Advocate Remuneration Order GN 263 of 2015, application for reference against the decision of Taxing Master has to be filed within 21 days from the date of an order.

The learned counsel submitted that this application was filed on 31st of May 2022 while the decision of Taxing master was delivered on 28th April 2022. She submitted that this application was filed out of statutory time because 21 days lapsed on 18th May 2022. She thus prayed this application to be dismissed and in support thereof she cited the case of RAPHAEL LOGISTICS (T) LTD VS ACESS ENGINEERING CO. LTD, MISC. COMMERCIAL REFERENCE NO. 181 OF 2017.

In reply to the submission by the learned counsel for the respondent, the Applicant submitted that, Taxation Cause No. 5 of 2020 was not between the parties in the present application and therefore he beseeched the court to decide this matter according to the laws.

In rejoinder to the submission by the Applicant, Ms. Johanitha insisted that the present application was filed out of time and since the applicant did not respond to the preliminary point of objection that means he conceded to it and for that matter this application should be dismissed.

Having heard the submissions from both parties, the issue for determination is whether or not this preliminary point of objection is meritorious.

To provide answers to the issue herein above, this court went through Order 7(2) of the Advocate Remuneration Order. This Order reads as follows,

"A reference under Order (1) shall be instituted by way of chamber summons supported by an affidavit and filed within 21 days from the date of the decision."

From the said order, it is apparent that the timeline set for filing applications for reference is 21 days from the date of issuance of the said order. In the present application the records shows that the decision of Taxing master was delivered on 28th April 2022 and therefore 21 days expired on 18th May 2022. Since the applicant's reference was filed on 31st May 2022, then by simple mathematics the applicant filed the present application after 34 days from the date of the order. In other words, he delayed of 13 days to file this reference.

From the foregoing observations this court find merits on the preliminary point of objection and this application is hereby dismissed with costs.

It is so ordered.



A.Y. Mwenda

Judge

07.10.2022

This ruling is delivered in chamber under the seal of this court in the absence of the applicant with notice and in the presence of Ms. Johanitha Jonathan, learned counsel for the respondent.



A.Y. Mwenda

Judge

07.10.2022