

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL REFERENCE NO. 11 OF 2021

SELEMANI SEIFAPPLICANT

VERSUS

HAFIDHI SAIDRESPONDENT

RULING

MRUMA,J.

This is a ruling on a reference filed by the Applicant Seleman Seif to oppose taxation of bill of costs in Taxation Cause No. 64 of 2020 before Fovo, Deputy Registrar as a taxing officer. In that bill of costs parties agreed on several items which were taxed as presented save for instruction fees in which the Respondent had claimed for Tshs 1,000,000/=.

Apparently the Applicant's is not challenging the amount taxed as instruction fees but the orders of the Taxing Officer dismissing his preliminary objection on the ground that the Application for taxation of bill of Costs was time barred. According to the counsel for the Applicant,

a party who is awarded costs is required to present his bill of costs within 60 days from the date an order awarding costs was passed. This, according to the learned counsel is as per Order 4 of GN No. 263 of 2015.

The learned counsel said that the order awarding costs was passed on 27th April 2020 and the bill of costs was filed on 29th June 2020 a period of 62 days. This period was two days outside the prescribed time.

I have carefully gone through the reference application, the submissions in support thereof and the law applicable. Order 4 of the Advocates Remuneration Order under which this application is pegged provides that:

"A decree holder may, within sixty days from the date of an order awarding costs, lodge an application for taxation of filing a bill of costs prepared in a manner provided for under order 55"

Submitting for the Applicant Ms. Mary Lamwai, contended that the decision made by the taxing Officer in Taxation Cause No. 64 of 2020 should be quashed and set aside because it was obtained in an illegal proceedings as it was brought in court out of time. In his ruling against

the preliminary objection, the learned taxing officer had ruled that the time used by the Respondent to upload the record in the online data base of the High Court was to be considered by the court as actual time of filing the matter in court. It is the contention of Ms. Marry Lamwai that uploading a document in the High Court data base does not amount to filing. According to the learned counsel when a document is admitted in on online system a party is given permission to make payment and file the document in the Registry. It is the counsel's contention therefore that a document is considered to be filed when fees are paid.

I have no doubt that the position taken by the learned counsel for the Applicant is correct position of the law in view of the old decision of the then Court of Appeal for East Africa in the case of **UNTA EXPORTS LTD V CUSTOMS (1970) E.A.648** where it was held that the filing of a case entails filing of documents in court registry and no document is considered as properly filed until the necessary court fees have been paid. However in contemporary world of highly developed information technology and with the introduction of e- filing system, the decision in Unta Exports (supra) may no longer be a good law. With e – filing systems where transmission of a record or file from one computer system to another, (usually large computer systems technically known as uploading

or simply from a network user's point of view to send a file to another computer that is set to receive it), is used, payment of court fees is preceded by a number of technical procedures which are not directly and the control of the payee. In such circumstances it may be unfair to subject a party who is required to pay court fees strictly to the principle laid down in **UNTA Export's case** (supra). In my view in such a situation subsection (2) of section 21 of the Law of Limitation Act [cap 89 RE 2019] should come into play. The said law provides that:

"In computing the period of limitation prescribed for any application, the time during which the Applicant has been prosecuting with due diligence, another Civil Proceeding, whether in court of first instance or in Court of Appeal against the same party for the same relief, shall be excluded where such proceedings is being prosecuted in good faith, in a Court which, from defect of jurisdiction or other cause of a like nature is unable to entertain it."

In the present application, although the Respondent was not prosecuting "*another Civil proceeding*" but he was prosecuting a portion or part of the same proceedings in that he was uploading a document in this court's data base, the time he spent in so doing should be excluded

in computing the period of limitation for filing a bill of Costs as prescribed under order 4 of the Advocates Remuneration Order GN No. 263 of 2015.

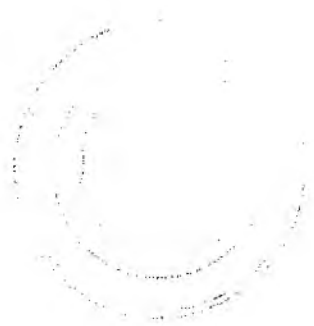
Now back to the provisions of order 4 of the Advocates Remuneration Order 2015, the word used by the law is "*may*". In law when the word "*may*" is used it entails an expression of possibility, a permissive choice to act or not to act and ordinarily implies some degree of discretion. This contrasts with the word "*shall*" which is generally used to indicate mandatory requirement or provision. Thus, the word "*may*" in Order 4 of the Advocates Remuneration Order should be generally constructed as permissive. It is a settled principle of statutory construction which has been adopted by courts that ordinarily the word *may* is constructed as permissive and the word *shall* as mandatory.

The intention of the framers of the law may be easy to fetch. Sixty days period after the order for costs is passed is a very short period in legal processes. Within such period the process of appeal, review or revision by an aggrieved party may be on going, thus a winning party is given an option to proceed to file/ lodge his bill of costs or await for all legal process concerning the matter to be completed so as to avoid multiplicity of actions relating to the same matter. Otherwise there is no justification for the law to set 60 days as a period of limitation for lodging

one's bill of costs. In other words Order 4 of the Advocates Remuneration Order does not provide that bill of costs must be filed within sixty (60) days. The law simply gives permission or option to file it within that period notwithstanding the possibility of a party who lost the suit processing an appeal against a decision from which costs were awarded.

For what I have discussed above, this reference is dismissed for being misconceived and for want of merits. The Respondent will have his costs.

Order accordingly.



A handwritten signature in black ink, appearing to read 'A. R. Mruma', is written above the printed name.

A. R. Mruma

Judge

31/10/2022

31/10/2022

Coram: Hon. A.R.Mruma,J


For the Applicant : Present

For the Respondent: Absent

Cc: Delphina

Court:

Ruling delivered in presence of the Applicant this 31st day of October 2022. Respondent is absent.



A. R. Mruma

Judge

31/10/2022