

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CIVIL REFERENCE NO. 1 OF 2021

(Originating from Taxation Cause No. 63 of 2017, High Court, Arusha Registry)

LONING'O SANAREAPPLICANT

VERSUS

MOSSES KING'ORI.....1st RESPONDENT

ALLAN REUBEN MOLLEL

T/A FIRST WORLD INVESTMENT & COURT

BROKERS.....2ND REPENDENT

RULING

1/11/2021 & 18/2/2022

ROBERT, J:-

The applicant, Loning'o Sanare, moved this Court under Order 7 (1) of the Advocates Remuneration Order, G.N. No. 264 of 2015, to make reference to the decision of the Deputy Registrar in Taxation Cause No. 63/2017 to determine the validity of amount of instruction fees allowed which was pegged from undisclosed figure against taxation

order. The application is supported by the affidavit sworn by the applicant herein.

Prior to the hearing of the application, counsel for the respondent raised a preliminary objection on a point of law that:

- 1. The application is incompetent for being filed out of time.*

At the hearing of the preliminary objection, the applicant enjoyed the legal services of Ms. Edna Mndeme, learned advocate while the respondent was represented by Mr. Ipanga Kimaay, learned advocate. The application was heard orally.

Highlighting on the point of preliminary objection, Mr. Kimaay argued that, this preliminary objection challenges the competence of the application for being filed out of time. He submitted that, the applicant having been out of time to file an application for reference, he filed Misc. Civil Application No. 101 of 2019 praying for extension of time to file his application for reference. The same was granted before Hon. Massara, J, on 19/2/2021 and the applicant was given 14 days to file his application for reference. Based on that decision, the applicant ought to have filed his application for reference on or before 4/3/2021. However, the same was filed on 10/3/2021 which, in a simple computation, was six (6) days late after the prescribed period. Thus, the applicant ought to have filed

an application for extension of time instead of filing this application. To support his argument, he referred the court to the decision in the case of **Denis T. Mkasa vs Farida Hamza** (Administrator of the estate of the Late Hamza Adam) and Another, Civil Application No. 46/08 of 2018 (unreported) and **Stephen Masato Wasira vs Joseph Sinde Wariyoba**, (1999) TLR 335.

He prayed for this application to be dismissed with costs.

Responding to the raised point of objection, Ms. Mndeme submitted that, although the endorsement reads that the application was filed on 10/3/2021, by that date the applicant had already filed his application online and the application went through the procedure of admission where the applicant was given control number for payment of the filed application. At the time of getting the control number they had presented the hard copies at the registry on 3/3/2021 but the printing of the receipt and the endorsement of the documents remained to be the function of the registry.

Surprisingly when they went to collect the summons, they noted that the application was processed on 10/3/2021, following the said challenge they reported the matter at the registrar's office and they

were waiting for the result when they received the Notice on this preliminary objection.

She submitted that, the receipt attached to this application shows that the payment was done on 4/3/2021 which is an indication that the applicant complied with the law as required as there is no way the applicant could have been given control number for payments while the application is not yet admitted online. She also argued that, the respondent should not paid costs in this application because he appeared in court before being served.

In his rejoinder, Mr. Kimaay submitted that, the applicant's counsel did not oppose the point of preliminary objection raised by the respondent. He faulted the learned counsel for the applicant for trying to be an advocate and a witness at the same time.

With regards to the issue of online filing of the application, he submitted that, there is nowhere in the affidavit supporting the application where the applicant mentioned when the application was filed or admitted on JSDS (Online system). He explained that, the applicant's counsel is blaming the registry office without any proof that she was really making follow-up on the matter with the registrar.

Regarding the receipt of payment, he submitted that the receipt indicates that payment was made on 10/3/2021 and not 4/3/2021 which the learned counsel for the applicant stated.

Submitting further, the learned counsel argued that, the arguments made by the counsel for the applicant would be relevant in an application for extension of time and cannot be used to oppose the preliminary objection.

Having heard the rival submissions made by the parties this court will now determine the merit of the point of objection made by the respondent's counsel.

Having gone through the records of the present application this court noted that, exchequer receipts for court fees for filling an application for this reference is dated 10/3/2021 and the application was stamped on the same date. Although the applicant signed his application on 2nd March, 2021 it is obvious that the application was officially registered on 10/3/2021 when the payment was done.

Counsel for the applicant's allegations that it was the office of the registrar which failed to admit the document within time when the documents were submitted and further that he was still working on the

matter with the office of the registrar is not supported with any evidence.

The same position was discussed by the Court of Appeal of Tanzania, in **David Mwakikunga vs Mzumbe University, successor in Title of IDM Mzumbe**, Civil Reference No. 12 of 2004 (unreported), whereby Justice Kaji, J.A ruled under page 6, 7 and 8 as follows;

"From these, together with the applicant's Oral submissions, it is clear to us that, the applicant is blaming the Civil Registry staff of the High Court for misleading him that the copy had first to be endorsed by the registrar before it was served on the respondent, and that the registry never returned to him the copy which he would otherwise have served the respondent. There is neither affidavit nor evidence of any kind from the registry office confirming the same....."

The same goes to our present case, as it is a well-known principle of law that he who alleges must prove, the applicant herein failed to discharge the said duty. It is crystal clear that, the applicant has failed to prove their blames against the Court Registry and have just demonstrated bare allegations which could not be relied upon.

Having said so, the raised point of preliminary objection is hereby sustained and the application is dismissed with costs.

It is so ordered.



K.N.ROBERT
JUDGE
18/2/2022