

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF TANGA
AT TANGA**

TAXATION REFERENCE NO. 01 OF 2021

(Arising from Bill of Costs No. 21 of 2020 of the High Court of Tanzania at Tanga)

**MARY KIMAMBO (As administrator of the estate of KEZIA ZEBEDAYO
TENG..... APPLICANT**

VERSUS

**SIMON GODSON MACHA (As administrator of the Estate of the late
GODSON MACHA..... RESPONDENT**

RULING

Date of last Order: - 06/10/2021

Date of Ruling:-18/02/2022

AGATHO, J.:

This Application is made by way of Chamber Summons and an Affidavit under Order 7 Rule (1) and (2) of the Advocates Remuneration Order, GN. No. 264 of 2015. In the Application, Applicant is dissatisfied with the decision of the Taxing Officer and therefore prays before the Court for the following orders;

- (a) That, the Ruling and Order delivered by the Taxing Officer in Bill of Costs No. 21 of 2020 of the High Court of Tanzania at Tanga denying the Applicant the right to be heard in respect of the point of law raised *suo motto* and disposing the above Bill of Costs be quashed and set aside.
- (b) That, costs of the application be provided.
- (c) Any other order (s) as the Honourable Court deems fit and just to grant.

On the 10th day of October 2021, the Court ordered the Application be heard by way of written submissions. The Applicant was represented by Ms. Elisia Paul, whereas the Respondent was represented by Mr. Martin Kilasara, Advocates.

In her submission, the Counsel for the Applicant submitted that the Taxing Officer raised an issue *suo motto* without affording the Applicant the right to be heard and that was in contravention of the rules of natural justice and Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977. To cement her argument, the Counsel referred the case of **Ausdril Tanzania Limited vs Mussa Joseph Kumili and Another, Civil Appeal No. 78 of 2014 CAT** at Mtwara (unreported) at page 5 where the Court considered the right to be heard being fundamental and constitutional right and the case of **Kubwandumi Ndemfoo Ndossi vs Mtei Bus Service Limited, Civil Appeal No. 257 of 2018, CAT at Arusha (unreported)** where the Court held that where the Court raise new issues, the same should be placed on record and parties must be given an opportunity to be heard and that denial of the right to be heard in any proceedings would vitiate the entire proceedings. It was therefore the counsel's observation that such omission amounted to a fundamental error which occasioned a miscarriage of justice to the Applicant and she prayed that the Application be granted with costs and the Ruling in Bill of Costs No. 21 of 2020 be quashed and set aside.

The Applicant's Counsel further submitted that the Taxing Officer erred holding that costs incurred at the Court of Appeal of Tanzania were claimed in the Bill of Costs. The Counsel added that if the Taxing Master found that costs incurred at the District Land and Housing Tribunal from item 1 to 59 and item 75,76,77 and 78 ought not to be included in the Bill, then the Applicant could have applied to

amend the Bill as per Order 56 of the Advocates Remuneration Order. The Counsel further submitted that the Taxing Officer erred holding that costs incurred at the High Court were not included in the Bill of Costs while the same were claimed under items 60, 74 and 79 of the Bill.

In his reply, the Counsel for the Respondent maintained that costs claimed under items 1 to 57 and items 75 to 78 of the Bill of Costs arising from the District Land and Housing Tribunal cannot be taxed at the High Court. The counsel referred the case of **Samwel Eliakunda vs Saidi Kidee, Civil Appeal No. 23 of 2000 High Court of Tanzania at Moshi (unreported)** where the Primary Court was precluded to tax District and High Court matters and further argued that the position also applies to District Land and Housing Tribunal or the High Court stating that they both have jurisdiction to solely determine costs incurred in matters before them. He therefore submitted that the Taxing Officer had no jurisdiction to tax Bill of Costs incurred at the Tribunal.

The Counsel further submitted that there was no prayer to amend the Bill of Costs and that since the Applicant certified the Bill to be correct then Order 56 restricts alterations of the Bill once it has been filed. He added that the Taxing Officer erred holding that the Bill of Costs was timely filed also holding that the District Land and Housing Tribunal awarded costs to the Applicant while the same were not awarded to her.

In her rejoinder, the counsel for the Applicant reiterated that the Applicant was denied right to be heard and further submitted that if the Respondent was dissatisfied with the decision of the Taxing Master overruling the preliminary objections, then he ought to file a Taxation Reference.

The Court have considered submissions from both sides and gone through the Court records and found that the relevant issue to be determined is whether an order by the Taxing Officer striking out the Bill of Costs on the issue raised *suo motto* was just.

Before hearing of the Bill of Costs, the Respondent raised preliminary objections that the same was time barred and that the costs that were claimed were not awarded to the Applicant. The Taxing Officer overruled the Objections and raised an issue of jurisdiction *suo motto* since the Bill of Costs that was filed contained costs arising from the District Land and Housing Tribunal. The Taxing Officer struck out the Bill of Costs for being incompetent as it included costs arising from the District Land and Housing Tribunal, the High Court and the Court of Appeal.

According to the case of **Kenya Ports Authority v. Modern Holdings Limited, EACJ Taxation Reference No. 4 of 2010** referred in the case of **The Secretary General of the East African Community v. Margaret N. Zziwa, Taxation Reference No. 1 of 2019 at page 9** it was held that the court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on error of principle, or the fee awarded was so manifestly excessive as to justify the interference that it was based on an error. The duty of this Court therefore is to inquire as to whether there is an error of principle with regard to the taxation of the Bill of Costs No. 21 of 2020.

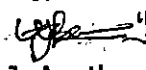
A thorough perusal of the Bill of Costs reveals that the Taxing Officer erred holding that costs that were claimed arose from the District Land and Housing Tribunal, the High Court and the Court of Appeal. There were no costs arising from

the Court of Appeal. Further, the fact that the Respondent is dissatisfied with the decision of the Taxing Officer, I concur with the counsel for the Applicant that the Respondent was supposed to apply for Taxation Reference in the High Court.

Regarding the issue that the Taxing Officer erred raising an issue *suo motto* without notifying the parties, that was in contravention of the right to be heard as a constitutional right. The Court however have considered that since the issue was that of jurisdiction then that remains to be the position of the law. When the Court lacks jurisdiction, the proceeding and the decision becomes a nullity. The Court cannot tax costs arising from the District Land and Housing Tribunal. But setting aside the decision of the Taxing Officer merely on the procedural irregularity will not be proper. In my view, considering the fact that there is an issue of jurisdiction, I uphold the decision of the Taxing Officer striking out the Bill of Costs for being incompetent for the Court to determine but for the interest of justice, I grant leave to re-file a proper Application for Bill of Costs before the Court. In that way the right to be heard will be secured too. No order for costs is given.

It is so ordered.

Dated at Tanga this 18th day of February, 2022


U. J. Agatho

Judge

18/02/2022

Date: 18/02/2022

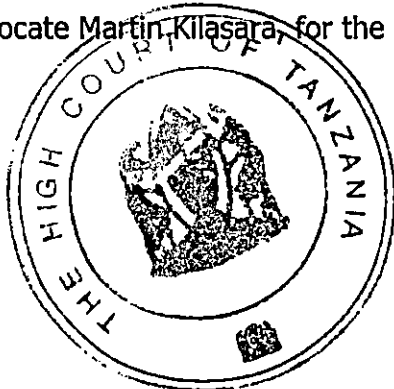
Coram: U. J. Agatho, J.


For the Applicant: Ms. Elisia Paul, Advocate

For the Respondent: Mr. Ahmed Makallo advocate holding brief of Mr. Martin
Kilasara , advocate

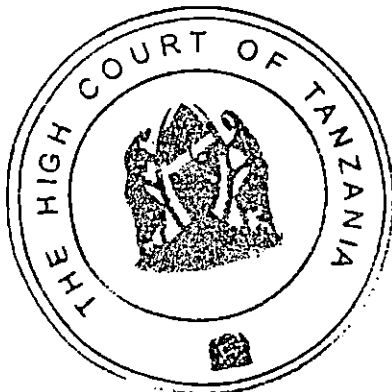
B/C: Zayumba


Court: Ruling delivered today 18th February, 2022 in the presence of Ms. Elisia Paul,
advocate for the Applicant and Mr. Ahmed Makallo advocate holding brief of
advocate Martin Kilasara, for the Respondent.




U. J. Agatho
Judge
18/02/2022

Court: Right of appeal explained.




U. J. Agatho
Judge
18/02/2022