

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 310 OF 2021**

**LEPHORD TIMOTH ..... APPELLANT**

***VERSUS***

**MARIAM YUSUPH CHALIGAMBO ..... RESPONDENT**

**(Appeal from the decision of the District Court of Kigamboni at Kigamboni  
in Taxation Cause No. 2 of 2021)**

**RULING**

29<sup>th</sup> and 30<sup>th</sup> March, 2022

**KISANYA, J.:**

This is an appeal against the ruling of a taxing officer of the District Court of Kigamboni at Kigamboni in Taxation Cause No. 2 of 2021. In that ruling, the appellant was ordered to pay the respondent, a sum of Tshs. 2,390,000/=, being costs arising from Civil Case No. 7 of 2021 of the District Court of Kigamboni.

Upon being served, the respondent filed a notice of preliminary objection on the following points of law:

- 1. That, the Civil Appeal is bad in law for being hopelessly time barred.*
- 2. That the Civil Appeal is bad in law and incompetent for being wrongly preferred with untenable remedy.*

When the appeal was called on for hearing, the appellant was represented by Mr. Paul Mtui, learned advocate holding brief of Mr. Samuel Shadrack with instruction to proceed. On the other side, the respondent enjoyed the legal services of Mr. Ferndand Makore and Ms. Mbelike Mangweha, learned advocates.

Mr. Mtui readily conceded to the preliminary objection and prayed to withdraw the appeal with leave refile. He also prayed that the appellant be spared from paying costs.

Responding, Mr. Makore cited the case of **Seif Seleman Rashid (As Administrator of the Estate of Zuhura Hemed vs Halima Seleman (As Adminstratix of the Estate of Selemani Rashid)**, Misc. Land Application No. 578 of 2021 (unreported). He went on to submit that an incompetent appeal cannot be withdrawn. The learned counsel argued further that the appeal deserves to be struck out with costs. He bolstered his argument by citing the case of **Mohamed Salmin vs Jummane Omary Mapesa**, Civil Application No. 4 of 2014 (unreported). It was his contention that the respondent had incurred costs by engaging attorneys who had to conduct some research on the issue under consideration.

When rose to rejoin, Mr. Mtui submitted that the cases cited by the respondent's counsel are distinguishable from the circumstances of this case. He reiterated his prayer that the appeal be withdrawn with no order costs.

Having considered the parties' submissions and the law, I have no spec of doubt that, indeed, this appeal is incompetent. Order 7(1) of the Advocates Remuneration Order, 2015, GN No. 263 of 2015, unreservedly provides that a decision of a taxing officer is challenged by filing a reference to a judge of the High Court. It is also provided for under order 7(2) of the Advocates Remuneration Order (supra) that the reference to the High Court should be by way of chamber summons supported by an affidavit and filed within 21 days from the date of impugned decision. Much as the law provides for a specific remedy to a person aggrieved by the decision of the taxing officer and mode of challenging such decision, I am convinced that the present appeal is incompetent before this Court.

With regard to the request to withdraw the appeal, I agree with Mr. Makore that granting such prayer amounts to pre-empting the respondent's objection. Furthermore, the law is settled that an incompetent matter cannot be withdrawn, amended or adjourned and that the proper recourse is to strike out the same. Apart from the case of **Noel Palangyo vs Tanga Cement**, Civil Appeal No. 4 of 2015, CAT (unreported) which was quoted in **Seif Seleman Rashid** (supra), that position was also stated in the case of **Ghati Methusela vs Matiko w/o Marwa Mariba**, CAT, Civil Application No. 6 of 2006 (unreported) when the Court of Appeal held:

*"It is now established that an incompetent proceeding, be it an appeal, application, etc., is incapable of adjournment, for the court*

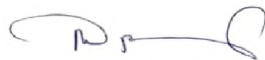
*cannot adjourn or allow to withdraw what is incompetently before it.”*

On the issue of costs, the established position is to the effect that costs follow the event. Considering that the appellant’s concession to the objection, I am of the view that the respondent is entitled to costs. It is clear that the respondent was subjected to engaging the counsel who, among others, found it necessary to raise the objection at hand.

In the upshot, the application is struck out on account of being incompetent.

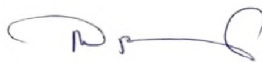
The appellant is condemned to pay costs

DATED at DAR ES SALAAM this 30<sup>th</sup> day of March, 2022.



S.E. Kisanya  
JUDGE

Court: Ruling delivered this 30<sup>th</sup> day of March, 2022 in the presence of Ms. Mbelike Mangweha, learned advocate for the respondent and in the absence of the appellant. B/C Zawadi present.



S.E. Kisanya  
JUDGE  
30/03/2022