THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

LAND REFERENCE NO.06 OF 2021

(From Mbeya High Court Misc. Land Application No.54 of 2021 and Bill of Cost No.28 of 2019 and Bill of Costs No.37 of 2020)

AUGUSTINO MKWEJI..... APPLICANT

VERSUS

ANAZIATA NGAILO.....RESPONDENT

RULING

Date of Hearing: 05/05/2022

Date of Ruling: 05/05/2022

MONGELLA, J.

The counsel for the respondent, Mr. Salvatory Twamalenke, filed notice of Preliminary Objection against the appellant's reference to this Court. The Reference challenges the decision of the Taxing Master rendered in Bill of Costs No.28 of 2019 and Bill of Costs No.37 of 2020. He had, initially, three points of preliminary objection, but during hearing he abandoned the third point and argued on the 1st and 2nd points to wit:

1. That the reference sought is bad in law for contravening Order 7(3) of the Advocates Remuneration Order, G.N. No.263 of 2015.
2. The reference sought is bad in law by being preferred without leave of the Court contrary to the ruling of this Court (Ebrahim, J) rendered on 03/12/2021.

Arguing on the 1st point, Mr. Twamalenke submitted that **Order 7(3) of the Advocates Remuneration Order, G.N. No.263 of 2015** requires copies of the reference to be served to the opposite party within seven (7) days. He argued that the reference at hand was filed in this Court on 22/12/2021, but served upon them on 11/01/2022 whereby more than 13 days had elapsed, thereby contravening the requirement of the law.

On the 2nd point, he argued that the application is bad in law for contravening the orders of this Court (Ebrahim, J.), which ruled that the Court only allowed the applicant to file Reference against Bill of Costs No.28 of 2019 and not Bill of Costs No.37 of 2020. He said that, contrary to the directives of the Court, the applicant filed reference against the two Bill of Costs. He therefore prayed for the application to be struck out with costs.

Mr. Mushokorwa conceded to being time barred in serving the copy of the reference to the respondent, which ought to have been served by 28th December, 2022. He however, prayed for the Court not to regard the respondent's counsel's contention that they were served

on 11th January 2022 as they were, in reality, served on 30th December 2021. In the circumstances, he did not reply to the 2nd point.

After considering the arguments by the counsels, I find that I do not have to dwell much on the preliminary objection. With regard to the 2nd point, the applicant applied for extension of time to file reference against Bill of Costs No.28 of 2019 and Bill of Costs No.37 of 2020. The Court found that the two could not be entertained in the same application as the reasons for the delay were obviously different. It therefore opted to determine the application on Bill of Costs No.28 of 2019. It rejected Bill of Costs No.37 of 2020 and adviced the applicant to file a separate application regarding Bill of Costs No.37 of 2020.

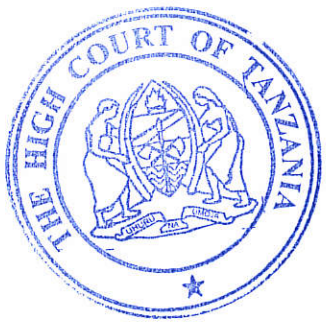
As argued by Mr. Twamalenke, the applicant filed reference against both Bill of Costs. In essence Bill of Costs No.37 of 2020 is untenable before this Court as it is time barred and no leave for extension of time was sought.

Regarding the 1st point, it has been conceded by the respondent's counsel, Mr. Justinian Mushokorwa that the Reference copies were served to the respondent on 30th December 2021, while the same was filed in this Court on 22nd December, 2021. Counting from the date of filing and the time limit set under the law, that is, of 7 days, the applicant delayed for two days. The copies were to be served by 28th December 2021. **Order 7 (3) of the Advocates Remuneration Order**

makes it mandatory for the copies to be served within 7 days to the opposite party. See also: **Haroon Mulla Pirmohamed Vs. Liberatus Laurent Mwang'ombe,** Civil Reference No.1 of 2017.

In the circumstances, the application for Reference by the applicant is found to be incompetent before this Court and consequently dismissed. Each party shall bear his own costs.

Dated at Mbeya on this 05th day of May 2022.



L.M. Mongella

Judge

05/05/2022