

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

CIVIL REFERENCE NO. 01 OF 2022

(Arising from Taxation Cause No. 18 of 2021)

EXIM BANK (TANZANIA LTD)..... APPLICANT

VERSUS

ABEED M. MANJIRESPONDENT

R U L I N G

12th Dec. 2022 & 23rd Feb., 2023

DYANSOBERA, J:

This reference arises from the decision of the Taxing Officer in Taxation Cause No. 18 of 2021 in which the respondent's bill of costs was taxed at Tshs. 38, 520, 000/=. The reference has been made under Order 7 (1) and (2) of the Advocates Remuneration Order, 2015 GN. No. 263 published on 17th July, 2015. It is made by way of a Chamber Summons supported with an affidavit sworn by Edmund Mwasaga, the applicant's Principal Officer.

In this application, the applicant is craving for various orders as specified in the chamber summons. However, the essence of the reference is on a jurisdictional issue. According to paragraph 1 of the applicant's chamber summons, this court is invited to grant orders for quashing and setting aside the Ruling of the Taxing Officer dated 20th December, 2021

in respect of Taxation Cause No. 18 of 2021. The ground upon which this applicant is pegging this argument is that the Taxing Officer had no jurisdiction to determine Taxation No. 18 of 2021 as the is arising from the decision of this court in Civil Case No. 4 of 2021 whose appeal is pending before the Court of Appeal of Tanzania and thereafter, this court be pleased to issue an order for staying the determination of the Taxation Cause No. 18 of 2021 pending the hearing and determination of the appeal against the decision of this court in Civil Case No. 4 of 2021 which is before the Court of Appeal of Tanzania. The rest grounds are ancillary to the first ground in that their determination are dependent on the outcome of whether or not the Taxing Officer had jurisdiction.

The hearing of this reference was conducted by way of written submissions. Mr. Makarios J. Tairo, learned Counsel, submitted for the applicant while for the respondent, Mr. Masoud Shaibu Mwanaupanga, learned Advocate, drew and filed the respondent's reply to submission to oppose the applicant's application for reference.

I undertake to start with the first ground of reference which questions the jurisdiction of the Taxing Officer to hear and determine the bill of costs because it is common ground that the question of jurisdiction is so fundamental that courts must as a matter of practice, be certain and

assured of their jurisdictional position at the commencement of the trial otherwise, the whole trial will be a nullity.

In that first ground, two orders are sought. One, to quash and set aside the ruling of the Taxing Officer dated 20th December, 2021 in respect of Taxation Cause No. 18 of 2021 on the ground that the Taxing Master had no jurisdiction to determine Taxation Cause No. 18 of 2021 as the same is arising from the decision of this Honourable court in civil Case No. 4 of 2021 whose appeal is pending before the Court of Appeal of Tanzania and, two, an order for staying the determination of the Taxation Cause No. 18 of 2021 pending the hearing and determination of the appeal against the decision of this Honourable Court in Civil Case No. 4 of 2021 which is before the Court of Appeal of Tanzania.

Submitting in support of this ground, learned Counsel for the applicant argued that there is a notice of appeal to the Court of Appeal of Tanzania lodged against the entire decision of this court in Civil Case No. 4 of 2017 whose facts are verified under paragraphs 6, 7, 8, 9.1 of the applicant's affidavit. It was his further argument that the applicant's preliminary objection on jurisdiction of the taxing officer in entertaining the bill of costs for taxation on ground that the applicant had initiated the process of appealing to the Court of Appeal by duly lodging a notice of appeal against the decision of the court in Civil Case No. 4 of 2017 was

overruled on the grounds that first, an order for costs is among the decreed orders hence its enforcement process through taxation is an execution under the Advocates Remuneration Order and its completion. is under O. XXI of the Civil Procedure Code and second, all decreed orders are at par; and that the bill of costs, as part of execution process enjoys similar protection under O. XXXIX rule 5 of the CPC.

Counsel for the applicant further faulted not only the taxing officer's holding that there was no order staying execution of the orders given, costs, inclusive but also his conclusion that this court was clothed with jurisdiction to entertain the taxation of bill of costs.

According to learned Counsel, the established principle of law is that, subject to some exceptions, the jurisdiction of the High Court to determine any claim founded on the decision which is the basis of the notice of appeal lodged in Court, ceased once a notice of appeal is lodged. The excepted matters according to Counsel for the applicant are an application for leave to appeal, an application for the provision of a certificate of a point of law; or an application for execution where there is no order of stay of execution from the Court of Appeal. He was of the view that the Taxation Cause No. 18 of 2021 did not fall within the exceptions covered by the law as restated by the Court of Appeal in its decision.

In buttressing this argument, learned Counsel for the applicant referred this court to various cases laws. First, is the case of **Mohamed Enterprises T Limited the Chief Harbour Master and the Tanzania Ports Authority**, Civil Appel No. 24 of 2015 in which it was observed that:-

"...after institution of the notice of appeal in this Court against the ruling on which the appellant's claim is founded, the High Court ceased to have jurisdiction."

Likewise, there was the case of **Matsushita Electric Co. Ltd v. Charles George t/a C.G. Travers**, Civil Application No. 71 of 2001 where the Court of Appeal had the following to say:-

Once a Notice of Appeal is filed under rule 76 (now rule 83 (1) of the Rules), then this Court is seized of the matter in exclusion of the High Court except for applications specifically provided for, such as leave to appeal or provision of a Certificate of law".

It was Counsel's further argument that in this case, the Court, after making reference to various authorities concluded on p. 12 of the judgment thus:

*From the authorities...save for specified applications as stated in the **Aero Helicopter** case...institution of a notice of appeal deprives the High Court of its power to entertain the proceedings giving rise to the notice of appeal"*

In his further submission, Mr. Tairo argued that the applicant lodged a notice of appeal on 23rd March, 2021 against the decision of this court in Civil Case No. 04 of 2017 while the respondent filed a bill of costs No. 18 of 2021 on 24th April, 2021.

Submitting in opposition. M. S. Mwanaupanga, learned Counsel for the respondent urged the court to dismiss this application for lack of merit stressing that the court had jurisdiction to entertain the taxation of the bill of costs the respondent had presented. He supported his argument by citing the case of **The Attorney General v. Amos Shavu**, Taxation Reference no. 2 of 2002 whereby the Court of Appeal sitting at Dar es Salaam had this to say:-

'Before I conclude, I desire to address briefly one or two things which cropped up. One, Mr. Kamba argued that taxing master erred in proceeding with the taxation while there was a pending appeal. I do not think so. Taxation has nothing to do with the decision in the high court against which an appeal was pending'.

Furthermore, this court was referred to its decision in **Rose Mkeku (Administratrix of the Estate of the late Simon Mkeku) v. Parves Shabbirdin**, Misc. Land Application No. 89 of 2021, High Court Mwanza where it was observed that: -.

I am in total agreement with Parves's advocates that there is no law that an appeal to the Court of Appeal stays taxation of the bill of costs.

As to the cases cited by Counsel for the applicant, he contended that the same are distinguishable. He joined hands with the taxing officer who relied on the reasoning given in the case of **Rose Mkeku** (supra) at p. 8 that: -

*"I am alive of the decision of the Court of Appeal in **Matsushita Electric Co. Ltd v Charles George t/a C.G. Traders**, Civil Application No. 71 of 200... the decision in Matsushita Electric Co. Ltd does not bar a decree hold to file an prosecute a bill of cost. The bill of costs are proceedings which by their nature are instituted after the judgment or the ruling is pronounced. Failure to file the bill of costs within 60 days renders it time barred. As stated above, I do not find any miscarriage of justice to tax the bill of costs once filed even when there is a pending appeal to the Court of Appeal"*

With that position elaborated in the cited case laws, I am in no doubt that the taxing officer had jurisdiction to entertain the bill of costs in Taxation Cause No. 18 of 2021.

Besides, as the record reveals, the bill of costs for taxation was presented for filing before the taxing master on 24th day of April, 2021, was heard on 26th day of October, 2021 and the ruling thereof delivered

on 20th day of December, 2021. This reference impugning the said ruling was filed before this court on 7th day of January, 2022.

As learned Counsel will certainly agree with me, by the time the bill of costs was heard and determined, there was no order by the Court of Appeal staying execution. According to the record, the Court of Appeal ordered *ex parte* stay of execution pending hearing *inter partes* of the application of stay of execution on 25th March, 2022. stay of execution.

The taxing officer was right in his ruling at p. 4 to align himself with learned Counsel for the respondent that none of the cited cases concerned an application for bill of costs. Indeed, this position is reinforced by the decision of the Court of Appeal in the case of **Attorney General v. Amos Shabu** (*supra*) as indicated above.

For the reasons stated, I dismiss the first limb of paragraph 1 of the chamber summons by declining to quash and set aside the ruling of the taxing officer in Taxation Cause No. 18 of 2021 and I hold that the taxing officer had jurisdiction, at that time, to entertain the bill of costs for taxation.

With regard to other orders sought in the chamber summons, I note that the Court of Appeal in Civil Application No. 78/08 of 2022 between **Exim Bank (Tanzania) Limited v. Abeed M. Manji**, did on 25th March, 2022, give *ex parte* order staying the execution of the decree of the High

Court in Civil Case No. 4 of 2017 dated 25.2.2021 pending hearing inter-
parte of the application for stay of execution.

With the order of the higher court, my hands are, in my view, tied.
I cannot go any further. This this court has to await the directives of the
Court of Appeal.



W.P. Dyansobera
Judge
23.2.2023

This judgment is delivered at Mwanza under my hand and the Seal of this
Court on this 23rd day of February, 2023 in the presence of Mr. Bruno Mvungi,
learned Counsel holding briefs for Messrs. Makarious J. Tairo and Masoud
Shaibu Mwanupanga, learned Advocates for, respectively, the applicant and
respondent.



W.P. Dyansobera
Judge

