

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

TAXATION REFERENCE NO. 1 OF 2023

*(Arising from the ruling of Nzega District Land and Housing Tribunal
in Taxation Cause No. 46 of 2018)*

PETER SUGA ----- APPLICANT

VERSUS

LUSOKA MUSA ----- RESPONDENT

JUDGMENT

Date: 21/03/2023 & 28/04/2023

BAHATI SALEMA, J.:

This is a taxation reference from the ruling delivered by the District Land and Housing Tribunal for Nzega in Taxation Cause No. 46 of 2018. The application was made under Orders 7(1), (2) and (3) of the Advocates Remuneration Order, 2015. The applicant prays this Court to set aside the ruling of Nzega District Land and Housing Tribunal in Taxation Cause No. 46 of 2018 with cost.

A brief history leading to this application is that, the applicant Peter Suga filed Misc. Land Application No. 86 of 2017 against the respondent Lusoka Musa at the District Land and Housing Tribunal seeking an extension of time to file an appeal against the decision of the Mwasala Ward Tribunal. The application ended up being dismissed with costs on 25/04/2018.

After the ruling was delivered, the respondent filed an application for a bill of cost vide Misc. Application No. 46 of 2018 claiming payment of TZS. 1,028,000/= . The application was disposed of by way of written submissions and on 24/10/2019 the respondent was granted a total of TZS 1,00,000/= as the costs for conducting Misc. Land Application No. 87 of 2017 and Taxation cause.

The applicant was dissatisfied with the tribunal's decision, hence this application for reference. The application was made by way of chamber summons supported by an affidavit sworn by Mr. Frank Samwel the applicant's counsel. In the said affidavit, the learned counsel complained that the decision of the tribunal is tainted with illegalities that;

1. The chairman did not give reasons for reaching the decision in Misc. Application No. 46 of 2018.
2. That, the learned chairman failed to consider the fact that the respondent had no service of advocate and therefore was not entitled to any cost.

In the hearing, the applicant enjoyed the service of Mr. Frank Samwel learned counsel, whereas the respondent was represented by Mr.Hassan Kilingo also learned counsel.

Submitting in support of the 1st ground Mr. Frank prayed this Court to quash the decision of the tribunal because the reasons for the decision were not advanced by the Taxing Officer and nowhere the ruling states the criteria he used to pay TZS 1,020,000/= as cost.

As to the second ground, Mr. Frank stated that the respondent had never been represented by an advocate because even the documents that were filed in the tribunal were drawn and filed by the respondent himself.

Mr. Frank reinforced that, the Bill of Costs that was filed before the tribunal has two parts, one for Professional charges and two for Disbursement, he stated that the respondent had a duty to prove that there was cost for professional charges and evidence that he had the service of legal counsel.

Further, Mr. Frank contended that there were no receipts to support prayers in paragraph 1 to 13, in the absence of which the prayers was supposed to be disallowed.

On the disbursement section on which a total of TZS 20,000 was claimed, the learned counsel stated that it could be allowed only if there were receipts produced during the hearing but it was not done.

Laying the foundation from Order 48 of Advocates Remuneration Order GN 264 the learned counsel only accepted TZS. 28,000 which was the filing fee and stated that TZS. 992,000/= was mistakenly pleaded therefore it was supposed to be disallowed. He, therefore, prayed this Court to grant the application with cost.

In reply, Mr. Kilingo stated that Order 55(1)(2) of the Advocates Remuneration Order explains what should be in the bill of cost and Order 55(3) provides for attending fees. He submitted further that, the respondent paid the advocate TZS 800,000 for preparing written

submissions and that the taxing officer has discretion under Order 12(1) to grant the application and he never demanded the receipts.

On disbursement, the learned counsel stated that the total cost demanded by the respondent included the fees that were directly paid to the court for filing of the counter affidavit and copy of judgment making a total of TZS. 28,000/=

Further, Mr. Kilingo stated that, in the ruling, the learned chairman granted all costs including fees for taxation, he, therefore, prayed the Court to disallow the application with costs.

Having heard the rival submission from both camps, the issue is whether the reference has merit.

In allowing the Costs for litigation, the East African Court of Appeal in *Prechand Rainchand vs Quarry Services of East Africa Ltd and Others* [1972] E. A 162 developed a principle that a successful litigant has to be fairly reimbursed for the costs he has incurred. For this principle to work, a successful litigant must prove before a taxing officer that he incurred the pleaded costs by bringing evidence to substantiate his claim.

In the instant application, the applicant payment of TZS 1,028,000/= as costs he incurred for filing fees, legal consultancy and preparation of written submissions. Upon my perusal of the record, nowhere it shows that the respondent produced receipts to exhibit payment of the claimed amount of money to the advocate, and if he had the

engagement of the advocate the bill of cost ought to be filed by the advocate himself.

The law requires that consultation cost be awarded where it is proven that payment was made to a registered advocate but in this case, the record shows that the respondent was represented by an advocate named Frank Samwel but no evidence to prove that he was paid the said sum by the respondent.

The applicant only agrees that the costs that the taxing officer ought to have awarded are the costs that were directly paid to the Court.

As to the other ground on reasons for the decision, the taxing officer indeed awarded the respondent a total of TZS: 1,000,000/= without stating how and what evidence made him come to that figure but upon paying a visit to the applicant's bill of costs, it is my considered opinion that the respondent ought to be awarded a total of TZS 192,000/= as indicated in item 2 to 13 of part A of Bill of Costs plus TZS: 36,000/= the cost that was paid to the court.

At that point in time, I find that there was no proof of costs incurred by the respondent to substantiate the award of TZS: 1,000,000/= instead the respondent ought to have been awarded a total of TZS: 228,000/= as I hereby do. That being said and done, the reference succeeds to the extent stated above. No order for costs.

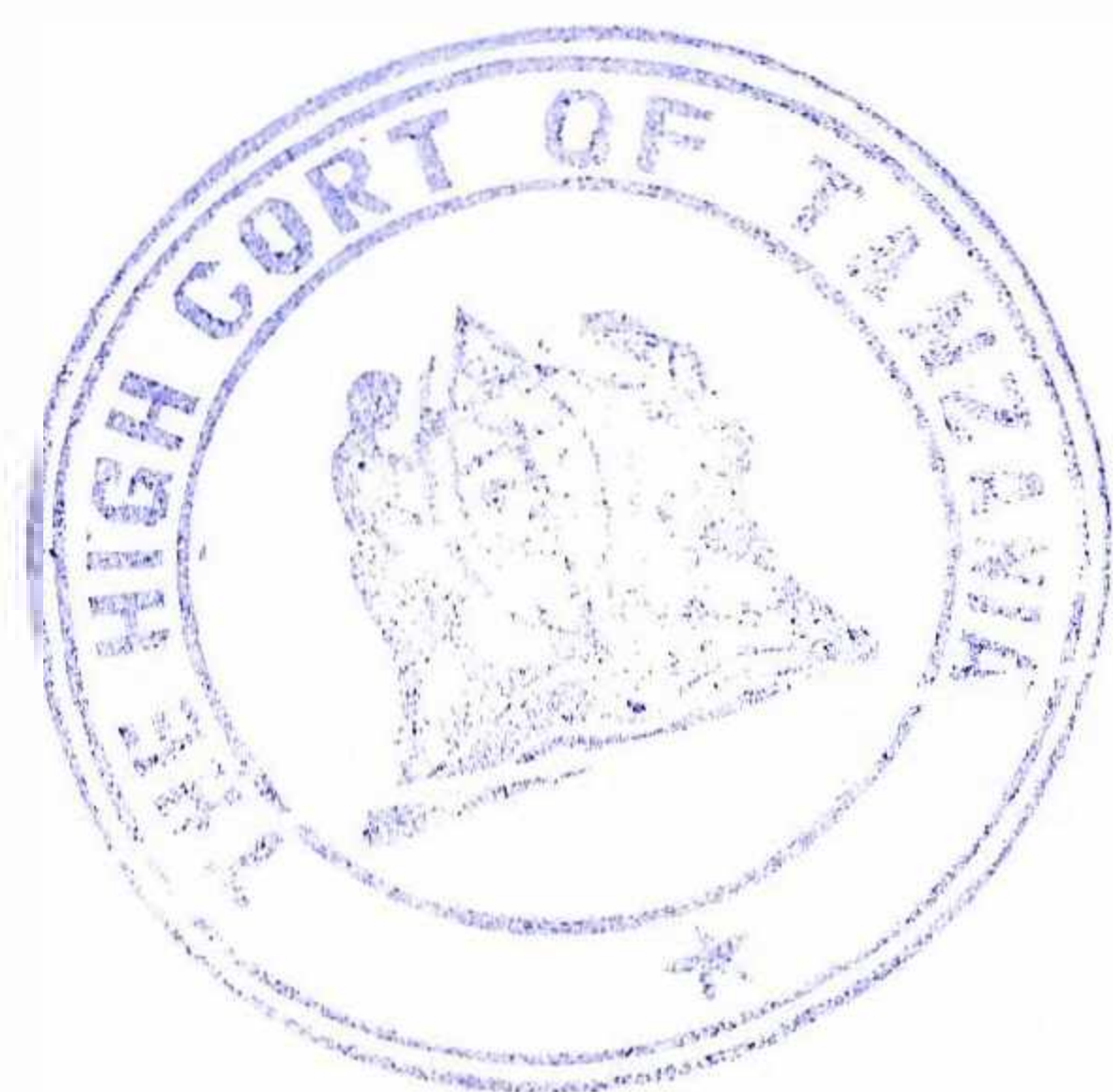
Order accordingly.



A. BAHATI SALEMA

JUDGE

05/05/2023



Date : 05/05/2023

Coram : Hon.J.Mdoe,Ag Dr

Applicant : Absent

Respondent : Represented

B/C : Grace Mkemwa,RMA

Court: Ruling is ready and delivered in presence of Advocate Agnes Simba for Respondent.



JOHN C. MDOE,

AG DR

05/05/2023

Right of Appeal fully explained.



JOHN C. MDOE,

AG DR

05/05/2023

