

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CIVIL REFERENCE NO. 01 OF 2023

(Arising from Taxation Cause No. 282 of 2022 in the District Land and Housing Tribunal for Mara at Musoma and Originated from Application No. 49/2022 of the District Land and Housing Tribunal for Mara)

WANGWE ISANZU (Administrator of the Estate

of the Late JACKSON ISANZU WANGWE) 1ST APPLICANT

FATUMA ISANZU 2ND APPLICANT

VERSUS

PETER MAHIMBO RESPONDENT

RULING

21st & 31 August, 2023

M. L. KOMBA, J.:

This is an application for reference against the ruling of the District Land and Housing Tribunal for Mara at Musoma (the Tribunal) in Taxation Cause No. 282 of 2022. The application is preferred under Order 7 (1) and (2) of the Advocates Remuneration Order, (GN. No. 264 of 2015). The applicants are moving the Court to grant the following orders:

1. That, this Honourable court be pleased to investigate the correctness propriety and illegality of the order of the District Land

and Housing Tribunal A. M. Kapinga dated 7/2/2023 in Taxation cause No. 282/2022.

2. Any other Order(s) this Honourable Court may deem fit and proper to grant in the circumstances of this Application.

The application was brought in way of chamber summons supported by an affidavit deposed by the applicants. On the other hand, the respondent contested the application by filing a counter affidavit deposed by himself.

When filing his counter affidavit, the respondent, together filed with the notice of preliminary objection on two points;

1. That, the Application is time barred.
2. That, the Application is bad in law for not being supported by the affidavit of Peter Mahimbo who was being nominated by Applicants in the chamber summons that their application will be supported by the affidavit of Peter Mahimbo instead it supported by other persons' affidavit without further notice.

The brief fact leading to the present application as depicted from affidavits of the parties and records available can be summarized as follows; That the respondent filed the land disputed in the Tribunal against the applicants (Land Application No. 49 of 2022). With costs, the

Tribunal dismissed the said Land Application on 05/09/2022. The applicants filed the Taxation Cause No. 282 of 2022 before the Tribunal claiming to be paid TZS 2,560,000/= as the costs for prosecuting the Land Application No. 49 of 2022 before the Tribunal.

In his ruling delivered on 07th February, 2023, out of TZS 2,560,000/=-, the Taxing Officer awarded the applicants costs to the tune of TZS 44,000/= being the costs of filing fee.

The applicants were dissatisfied with the decision of Taxing Officer. Thus, they lodged the present application seeking to challenge the decision of Taxing Officer and moving the Court to examine the correctness and the legality of the order of the Tribunal.

It is prominent that, whatever there is a preliminary objection, the Court has to deal with it first before diving into the merit of the case. See the case of **Deonesia Onesmo Muyoga & 4 Others vs Emmanuel Jumanne Luhahula**, Civil Appeal No. 219 of 2020 CAT at Tabora. Therefore, as a custom I will do the same.

When the application was called on for hearing of preliminary objection raised by the respondent, the applicants were enjoyed the service of Mr. Daudi Mahemba, while on the other hand the respondent had the service of Mr. Emmanuel Gervas, both learned advocates.

Starting to roll the ball, Mr. Gervas, the respondent counsel, submitted that pursuant to Order 7 (2) of GN. No. 265 of 2015 which provide for 21 days to file reference when the party aggrieved by the Taxing Officer decision, the application by the applicants is out of time. The counsel proceeded that, the impugned decision was delivered on 07th February, 2023 which means 21 days expired on 28th February, 2023 but the application at hand was filed on 06th March, 2023 six days more from the duration prescribed by the law. The counsel mentioned section 60 (1) (b) of the Interpretation of Laws Act, Cap 1 [R.E 2019] that where the word 'from' is used that day shall not be included in counting a period.

With regard to the second point of objection, the respondent counsel argued that the applicants' affidavit is defective since it is not of Peter Mahimbo as it was described in the chamber summons. The counsel proceeded that, Peter Mahimbo is respondent and it is not common the respondent to support the applicant's application. The counsel was of the view that, the error cannot be cured by the defence of slip of the pen as an application has no such affidavit as pleaded. He thus prayed the application to be dismissed with costs.

Responding, Mr. Mahemba, the applicants' counsel, was of the view that the applicants were on time since the copy of impugned decision was signed and availed to them on 15th February, 2023 and they filed the present application on 06th March, 2023. The counsel submitted that he is aware of section 60 (1) (b) of Cap 1 but the applicants filed their application within 20 days.

Regarding to the defective affidavit, the applicants' counsel prayed the court to invoke section 3 A of the Civil Procedure Code, Cap 33 [R.E 2019] as the mistake was slip of the pen. Mr. Mahemba then prayed the preliminary objection raised by the respondent to be overruled and the main application to be entertained on merit.

In rejoinder, Mr. Gervas, referring to Order 7 (2) of GN. 265 of 215 he argued that the law does not direct the necessity of attaching the impugned decision when filing for reference rather than it provide for chamber summons and affidavit. As to the second point of objection, the counsel reiterated what he submitted in chief.

Having heard the submissions of both parties it is now my turn to determine whether the preliminary objection raised by the respondent has merit.

I will prefer to start with the second point of preliminary objection, that whether the applicants' affidavit is defective for failure to be deposed by the person mentioned in a chamber summons. It is evidently portrayed on the chamber summons filed by the applicants that the chamber summons will be supported by the affidavit of **Peter Mahimbo, the Applicant**. Mr. Mahemba prayed this court to invoke the principle of Overriding Objective as the omission is the slip of the pen. Although he conceded that it is not ordinary for the respondent to support the applicant's application, the respondent counsel was of view that, the error cannot be cured by the defence of slip of the pen as an application has no such affidavit as pleaded.

On my side I find the error is far minor to think that would have put the rights of the parties at stake. As rightly argued by the applicants' counsel, I find the error is the slip of the pen as Peter Mahimbo mentioned to be an applicant who his affidavit will be attached while in reality, he is the respondent. Nevertheless, the respondent counsel consented that it is not ordinary for the respondent to support the applicant's application.

In view of the above reasons advanced by the applicants' counsel and observed by this court, I am of the settled position that as the court of

record which must ensure that justice is done and cases must come to end. It is important to employ the Principle of Overriding objective brought by the Written Laws (Miscellaneous Amendments) (No.3) Act,2018 [Act No.8 of 2018] which requires courts to deal with the cases justly, and to have regard to substantial justice. Therefore, I find the second point of preliminary objection is without merit and I dismiss it.

As to the first point of preliminary objection regarding time for instituting the application for reference, for easy reference I will reproduce the relevant provision. Order 7 (1) and (2) of the GN. No. 265 of 2015;

7.-(1) Any party aggrieved by a decision of the Taxing officer, may file reference to a judge of the High Court.

*(2) A reference under order (1), shall be instituted by way of chamber summons supported by an affidavit and be filed **within 21 days of from the date of the decision.***

The provision is clear that, the application of this kind should be filed within 21 days from the date of impugned decision. The applicants' counsel was of the opinion that since the applicants obtained a copy of impugned decision on 15th February, 2023 and filed the application on 06th March, 2023, they were on time. From his argument, it seems that the applicants' counsel started to count the day from the date the applicants obtained the copy of the decision. That is not the essence of

Order 7 (2) of the GN. No. 265 of 2015. The law provides that the time starting to run from the date the impugned decision is delivered, in this case is 07th February, 2023, and not from the time were the parties obtained a copy of the challenged decision. Therefore, it is obvious that this application was filed out of six days from the time prescribed by the law.

What I discover it is the negligence to the applicants' side. Counting from the date they availed with the copy of the impugned decision it was almost 13 days remained to reach the deadline, but they did nothing. They sleep over their right.

In the event, I find the second point of preliminary objection to be plausible. I find this application was filed out of time and I dismiss it with costs.

It is so ordered.

DATED at **MUSOMA** this 31st day of August 2023.




M. L. KOMBA
Judge