

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND REFERENCE NO.20 OF 2022

(Arising from Misc. Land Application No.317 of 2019 of the District Land and Housing Tribunal for Dodoma at Dodoma)

KASIM RYENGE MASENZA.....APPLICANT

VERSUS

MONICA CLEOPA ELISHA.....RESPONDENT

RULING

2/5/2023 & 7/8/2023

KHALFAN, J.

This reference has been brought to the attention of the Court under order 7(1) and (2) of the Advocates Remuneration Order, 2015 [GN No. 264 of 2015] by the Applicant, Kasim Ryenge Masenza against the decision of the District Land and Housing Tribunal for Dodoma at Dodoma in Misc. Land Application 317 of 2019 that was given in favour of the Respondent, Monica Cleopa Elisha. The reference has been brought by way of chamber summons and is supported by an Affidavit affirmed by the Applicant himself. The reference seeks the following orders, thus:

- 1. That, the Honourable Court be pleased to quash, set aside the decision of the District Land and Housing Tribunal of Dodoma at Dodoma in Misc. Land Application No. 317 of 2019.*
- 2. Costs of this application be provided for.*
- 3. Any other order/ relief(s) this Honourable Court shall deem fit and just to grant.*

The Respondent by way of Counter Affidavit sworn by herself contested the reference. When the reference was heard in the Court on the 2nd day of May, 2023 the learned advocates, Ms. Lucyana Nyondo and Mr. Nchimbi Keneth appeared for the Applicant and the Respondent respectively.

The Applicant adopted his Affidavit to form part of his submissions in the Court. He dwelt on paragraphs 2, 3,4,5,6, and 7 of the Affidavit. That, initially, there was a case between the Applicant and the Respondent before the Ward Tribunal of Ipagala. This case was decided in favour of the Respondent. That, being aggrieved with such a decision, the Applicant unsuccessfully appealed to the District Land and Housing Tribunal for Dodoma whereby no any order as to costs was issued thereof as evidenced in 'Annexure KM1' to the Affidavit. That, still being

aggrieved with the decision of the trial tribunal, the Applicant appealed before this Court where the case was withdrawn with no any order as to costs as evidenced in 'Annexure KM2' to the Affidavit. That, the Applicant further filed Land Application No.255 of 2019 against the Respondent plus the Dodoma City Council in the trial tribunal which was also withdrawn and no any order as to costs was issued as so evidenced in 'Annexure KM3' to the Affidavit.

That, however, the Respondent, without any legal justification, proceeded to lodge an application for bill of costs (Application No. 317 of 2019) in the trial tribunal claiming a total of TZS 14, 545,000/=whereby the taxing master awarded her TZS.4, 010,000/= being costs spent in the case to be paid by the Applicant within 14 days as evidenced in 'Annexure KM4' to the Affidavit.

The Applicant argued that, the taxing master misguided himself to award costs without there being any order which justified that the Respondent was entitled to such costs. The Applicant supported his argument by making reference to order 4 of the Advocates Renumeration Order, 2015 [GN No. 264 of 2015] which states that:

A decree holder may, within sixty days from the date of an order awarding costs, lodge an application for taxation by filling a bill of costs prepared in a manner provided for under order 55

The Applicant drew the attention of the Court to **DB Shapriya & Company Limited v. Regional Manager, Tanroads Lindi** (CAT) Civil Reference No. 1 of 2018, Dar es Salaam Registry (unreported) where on page 9 of the ruling, the Court of Appeal of the United Republic of Tanzania explained that an award of costs must be made specifically and explicitly in the final disposal order. The Applicant rested his case by praying the Court to quash and set aside the decision of the trial tribunal in Land Application No. 317 of 2019 since it had no legal basis.

On her part, the Respondent initially submitted that the present reference before this Court was time barred because it was lodged on 10/6/2022 whereas the same was withdrawn on 10/5/2022. That, such attempt is contrary to order 7 (2) of the Advocates' Remuneration Order, 2015 [GN No. 264 of 2015] which requires a reference to be filled within 21 days from the date of the decision of the taxing master. The Respondent submitted that counting from 10/5/2022 to 10/6/2022 is

past 30 days that the reference was filled. Thus, she prayed the reference to be struck out for being filled out of time.

The Respondent submitted that she was entitled to the award of costs because the case originates from 2017 to-date. That, she has incurred costs for: engaging legal representation, fare and stationaries, payment of the case since it was in the ward tribunal. The Respondent argued that the fact that the judgement of the trial tribunal remained silent on the issue of costs did not prevent her from filing the bill of costs. To support her argument, the Respondent referred the Court to the case of **Yusuph Mpini and Two Others v. Juma Y. Mkinga and Two Others** (HC) Civil Appeal No. 1 of 2017, Dar es Salaam Registry (unreported) where on page 4 of the decision, the High Court cited with approval the case of **Geofields Tanzania Limited v. Maliasali Resources Limited and Others** (TZHC COM D) Misc. Commercial Cause No.323 of 2015 where the High Court Commercial Division held that:

'It is trite law that the losing party should bear the costs of a matter to compensate the successful party for expenses incurred for having to vindicate the right'

Basing on the above case law, the Respondent insisted that since she won the case before the trial tribunal, she was therefore entitled to the award of costs by the Applicant. The Respondent prayed that the Court dismiss the reference with costs.

In rejoinder, the Applicant submitted that the reference was not time barred as already decided by this Court (Kagomba,J) in the ruling dated 24th day of October, 2022 where the Respondent had raised a preliminary point of objection on the same which was accordingly dismissed. The Applicant added that the issue of costs as stipulated in section 30 of the Civil Procedure Code [Cap 33 RE 2019] is a matter of discretion of the Court and not a right of the party. The Applicant also argued that all the costs which the Respondent claimed to have incurred in the pursuit of the case were equally incurred by the Applicant. At last, the Applicant once again prayed the Court to quash and set aside the decision of trial tribunal in Land Application No. 317 of 2019 for lack of a legal basis.

From the record of the Court, the issue of time limit with regard to this reference was raised by the Respondent and accordingly disposed of by the Court as submitted by the Applicant.

What is not in dispute between the parties as per their respective submissions is the fact that there has been no any order as to costs awarded by the ward tribunal, trial tribunal as well as this Court. The Court has the same observation. The issue in dispute and subject to determination by the Court is whether it was valid for the trial tribunal in Land Application No. 317 of 2019 (application for bill of costs) to award the Respondent costs for the case in the absence of such an explicit order.

The Applicant has premised his arguments for the reference basing on the case of **DB Shapriya** (*supra*) whilst the Respondent's arguments against the reference are based on the case of **Yusuph Mpini** (*supra*). In **DB Shapriya** (*supra*) the Court of Appeal dismissed an appeal case without indicating anything as to costs the Applicant therein filed for taxation for a bill of costs. The Respondent therein raised a preliminary objection that, there is no any order in awarding costs. Thus, there can be no bill of costs to be taxed. The Court of Appeal, in deciding the matter, stated on page 8 that:

'I would also add that since the discretion in awarding or denying a party cost must be exercised judicially and not by caprice, the Courts is enjoined

to state explicitly and specifically which party is to meet the costs of the action of the other party to the action. That is so especially on the reason that an award of costs to one party against the other grants a benefit to the former and imposes liability on the latter. Such an award, therefore, cannot be merely implicit.'

In **Yusuph Mpini** (*supra*), the Appellants were aggrieved with the failure of the trial court to grant them costs for the suit. They appealed to the High Court on only one ground that the trial magistrate erred in law in dismissing the suit without costs. At page 4 to 5 of the Judgement the High Court held that:

'In the instant case, the judgement is entirely silent on the issue of costs. In the light of the above authorities and considering that the Appellants fully participated and engaged an advocate it is naturally that they incurred some costs which they would not have incurred in the absences of a suit against them, ... As correctly argued on behalf of the Respondent the discretion to award costs being a judicial discretion must as a rule be judiciously exercised. Thus it is imperative for the trial court to assign reasons supporting the withholding of costs. In the absence of such reasons, as the instant case, the

discretion cannot be said to have been judiciously exercised'.

What can be learned in **Yusuph Mpini** (*supra*) is that following the dismissal of the suit with no order as to costs, the Appellant therein appealed to the High Court seeking for an order of award of costs thereof. Consequently, the same was granted. However, the circumstances in the instant reference are quite different. That, the Respondent herein proceeded to apply for a bill of costs in the absence of an order granting her costs. There is also no successful appeal by the Respondent regarding the silence of such an order awarding her costs like what transpired in **Yusuph Mpini** (*supra*). Thus, the trial tribunal could neither have later on implied anything from its own decision beyond what it had stated so expressly nor that what was expressly decided by the Court. In other words, there was no any order as to costs as so required under order 4 of the Advocates' Remuneration Order, 2015 [GN No. 264 of 2015].

Either way, **Yusuph Mpini** (*supra*) being a decision of the High Court, cannot stand in the same status as the decision of **DB Shapriya** which is a Court of Appeal decision. The Court is bound by the decisions of the Court of Appeal of the United Republic of Tanzania under the

operation of the doctrine of precedents. That, being the well-known position of the law, the decision of trial tribunal that has given rise to the instant reference is manifestly invalid.

That being said, the reference is hereby allowed as the decision and orders of the District Land and Housing Tribunal for Dodoma at Dodoma dated the 13th of July, 2020 in respect to Land Application No.317 of 2019, are hereby quashed and set aside accordingly. The parties to this reference shall bear their own costs. It is hereby so ordered.




F. R. KHALFAN

JUDGE

7/8/2023