

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**CIVIL REFERENCE NO.01 OF 2023**

*(Originating from High Court of Tanzania at SHINYANGA Taxation Case No.03 of 2021)*

**DR. LUIS B. SHIJA ..... APPLICANT**

**VERSUS**

**DR. KAMMU PETER LUGEKA .....RESPONDENT**

**RULING**

**7<sup>th</sup> & 25<sup>th</sup> August 2023**

**F. H. MAHIMBALI, J**

Originally, the applicant was on 27<sup>th</sup> October 2020 amongst orders condemned to pay costs of the case by the order of this Court when determining Civil Case, No 2 of 2018. The respondent then enforced that order by filing Taxation Cause No. 3 of 2021 in which the total taxation was taxed at 12,940,000/=. The applicant is aggrieved by that taxation award, thus the basis of the current reference application before this court challenging the Taxing Master's award.

During the hearing of the application, the applicant was represented by Mr. Frank Samwel and for the respondent was Mr. Kadaraja, both learned advocates.

When the case came for hearing on 7<sup>th</sup> August, 2023, the respondent's counsel raised an objection on legal point that the applicant's application is time barred and secondly, that it contravenes order 7 rule 3 of the GN 264 of 2015.

As regards to the first P.O, relying on print out from the *JSDS2*, he tried to establish by the JSDS print out he supplied to Court that Civil Reference No 1 of 2023 was filed on Wednesday 1<sup>st</sup> March, 2023. On this support, he contended that this reference application has been filed out of time as it ought to have been filed within 21 days (Order 7, Rule 2 of the GN 264 of 2015). In the context of this case, it ought not to have been filed not later than 27<sup>th</sup> February, 2023. Thus this bill of costs is time barred for two days.

On the second preliminary Objection, he argued that as per **Order 7, Rule 3 of GN 264 of 2015**, the applicant is duty bound to serve he respondent within 7 days after the filing of the said application. He submitted that, unfortunately, the applicant in this application failed to serve the respondent within time but on 13<sup>th</sup> April, 2023 and with chamber summons only. It is his considered view that the rules of Procedure are not for decorating but roadmap for justice, thus must be highly respected.

He concluded his submission by praying that with the first preliminary objection, the application be dismissed with costs, whereas with the 2<sup>nd</sup> preliminary objection, the application be considered as incompetent thus be struck out for that incompetency.

Resisting the filed legal objections, Mr. Frank Samwel learned advocate submitted that this current application was filed electronically on **24<sup>th</sup> February, 2023 at 20:22 hours** (he supplied evidence on the electronic filing establishing that he filed the same at that date and time).

With regard to the 2<sup>nd</sup> limb of preliminary objection, he admitted that it is true that as per procedural requirement, the respondent ought to have been served within seven days as stipulated by law. However, in the context of this case, he submitted that the respondent was not ready to receive the said documents without first communicating with his lawyer for a guidance. Nevertheless, he contended that there has not been prejudice or injustice to him.

With these submissions, he prayed that the preliminary objections raised be dismissed as being baseless.



On the merit of the application, Mr. Frank Samwel, learned advocate first prayed to adopt the affidavit of the applicant's counsel dated 24<sup>th</sup> February, 2023, to form part of his submissions.

On the first ground for this application he submitted that the said taxation cause was brought out of time. The taxation cause emanates from Civil Case No.2 of 2018, (High Court Shinyanga), which was struck out with costs on 27<sup>th</sup> October, 2020. As per rule 4 of G.N. 264 of 2015, such an application ought to be filed within 60 days. Counting from 27<sup>th</sup> October, 2020, the 60 days expired on 26<sup>th</sup> December, 2020. However, the application for taxation was filed before this court on 2<sup>nd</sup> January, 2021. Therefore, the said application was time barred for seven days.

He convinced this Court, that this ground is not raised for the first time, as he had also raised it during the taxation cause. However, the taxing master without any justifiable cause conceded that the said application was filed on 26<sup>th</sup> December, 2020 (on last date) at 23:35 hours. He had no dispute on that if that was actually done as provided by the Electronic Filing Rules of 2018, Rule 21 (1) of the Rules clearly stipulates so. His concern, however is, there has not been proof that the said document was filed electronically on the mentioned date of 26<sup>th</sup> December, 2020 and at 23:35



hours as alleged. He had expected that there would have been such a print out from the respondent's counsel in response to the said issue.

To substantiate his claim, he drew support from the case of **Samwel Nyala Nghuni and 5 others VS. Patrick Ososoro Nyamangulu**, Civil Reference No.21 of 2021, High Court\_Mwanza, where this court faced a similar objection and at page 9, and the court emphasized on the issue of proof. He therefore emphasized that, in the absence of the print out as alleged, renders that application not being filed within time. The taxing master then erred in placing reliance to the respondent's submission on the absence of proof.

On the second ground, he argued that the awarded bill of costs was so high and unlawful. Relying support from the 11<sup>th</sup> Schedule of the G.N.264 of 2015 item K", he submitted that there ought to have been the guiding rule by the Taxing Master. As per this item, the instruction fees ought not to be beyond 1,000,000/= contrary to 15,000,000/= prayed.

On the third ground, he argued that the Taxing Master has not considered the stage upon which the said suit was struck out. As this suit was determined at earliest time, the award of 15,000,000/= as instruction fees was so excessive in his considered view.

On these grounds as argued, he prayed that this application be granted, the decision thereof be set aside and costs be provided for.

Countering the said application, Mr. Kadaraja learned advocate submitted that it is not true that bill of costs No 3 of 2021 was filed out of time as contended. He first maintained that the bill of costs was filed on 26<sup>th</sup> December, 2020 whereas the judgment giving birth the said bill of costs application was issued on 27<sup>th</sup> October, 2020. Counting from 27<sup>th</sup> October 2020 to 26<sup>th</sup> December 2020 days, he contended that it was exactly filed on the 60<sup>th</sup> day.

Mr. Kadaraja on the other hand, conceded that before the Taxation Cause was heard, the applicant's counsel had raised the similar preliminary objection on timeliness of the application. However, upon thorough deliberation, the Deputy Registrar dismissed that Preliminary Objection, he justifying that he being the custodian of all these systems, he was the person better placed to rule on that properly. As he rightly considered the said objection, he is sure that what was ruled was right as he did so after being sufficiently satisfied so.

He challenged the applicant's counsel for failure to submit case reports to establish his claims that it was late filed basing on the legal principle that

he who claims must establish. As he failed to discharge that, he submitted that the respondent's arguments/submissions convinced the Taxing Master, thus, this ground of appeal is baseless.

With the instruction fees, he argued that the 11<sup>th</sup> Schedule, item "K" of GN.264 of 2015 is not applicable in the context of this case. As per plaint, what was being claimed was 155,000,000/=. Thus does not fall into the 11<sup>th</sup> Schedule but 9<sup>th</sup> Schedule in which the scale is well provided. Therefore, the Taxing Master was proper in ascertaining that fee as per that scale. Considering the complexity of the matter, the taxation of the case was proper in his considered view.

On the third ground, that the taxation of the case didn't consider the stage of the case which had reached, it has been the considered view of Mr. Kadaraja, that the instruction fees do not consider the time the case spent in court but the claims in the plaint. The legal fee is unlike a civil engineering work whose payment is only done upon presentation of certificate of value for the work done assessed and approved by the consultant.

Since taxation is the discretionary power by the Taxing Officer, he properly exercised that power (See **Eredina William Swai VS. Andrea Nehemia Swai and another**, Civil Reference No.01 of 2012 High Court



Moshi quoting the case of **Tanzania Rent a Car Limited Versus Peter Kimuhu**, Civil Reference No.09 of 2020, CAT (unreported) therefore, there was nothing excessive as alleged, emphasized Mr. Kadaraja.

On this submission he prayed that this reference application be dismissed with costs.

Battling on timeliness of the filing of the said Bill of costs application, Mr. Frank Samwel, learned advocate rejoined that the filing of the said bill of costs on 26<sup>th</sup> December, 2020, has not been established. As there is no proof of the date he electronically filed/submitted the said bill of costs on line, the available records make his application before the Deputy Registrar being time barred as established it being filed on 2<sup>nd</sup> January, 2021. He insisted that as they had discharged their duty on the allegations before the Deputy Registrar as per stamp on the filed documents, the respondent ought to have countered it by establishing proof of the electronic filing being done on 26<sup>th</sup> December, 2020 at 23.00hrs as alleged.

On the instruction fees, he maintained his stand that the 11<sup>th</sup> Schedule is more appropriate than the 9<sup>th</sup> Schedule. He submitted that, just by reading, one encounters differences on their titles. That being not a claim on liquidated sum, the taxation on 9<sup>th</sup> Schedule is baseless. Thus, the taxed

costs, on his considered view were so high and unjustifiable. With the cited case of **Erenedina William Swai** (supra) at 11<sup>th</sup> page, he submitted that it is more relevant on their side than the respondent.

That was all about the submissions of the parties as far as hearing of the preliminary objections and the main application of the case is concerned. The vital question first is whether the said preliminary objections by the respondent that the reference application has been filed out of the prescribed time and that contravenes the provisions of Order 7, Rule 3 of the GN 264 of 2015 are merited.

I have digested the submissions by the both counsel for and against, I am of the considered view as per proof given by the applicant's counsel, it is clear that this application is filed within time. I say so, basing on the proof given by the applicant's counsel that he submitted the said application electronically on 24<sup>th</sup> February 2023 at 20:22:20 hrs. Thus, this is a complete proof and is in compliance with Rule 21(1) of the GN No.148 of 2018 (JUDICATURE AND APPLICATION OF LAWS (ELECTRONIC FILING) RULES, 2018 which provides:

***21.-(1) A document shall be considered to have been filed if it is submitted through the electronic filing system***

*before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected.*

***(2) A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day [Emphasis added].***

The argument by Mr. Kadaraja on his print out extract that the said Reference Application has been filed on Wednesday March 1<sup>st</sup> of 2023, thus is out of time, is misplaced. In essence I agree that the said print out is one of the reports generated by our JSDS system (The Judiciary Statistical Dashboard System), however it is not the basis of establishing the date of submission into our JSDS as per GN 148 of 2018 (The JUDICATURE AND APPLICATION OF LAWS (ELECTRONIC FILING) RULES, 2018), but proof that the said case has now been filed, assigned to a judge and is in existence into the case registry with a date fixed for hearing.

What Mr. Kadaraja must be aware of is this fact that case admission is a process. We start with submission, admission, registration, assignment and issuance of first summons. With the introduction of the Electronic Filing Rules, the process of case registration has been simplified as a mere proof



of submission into the system, relieves a party with a pressure of late filing. The proof of submission into the Judiciary Statistical Dashboard System is a complete proof that the case has been filed into the registry, though there is post process of admission, bill generation and issuance of control number, payment, registration into appropriate case register, assignment and issuance of first court's summons.

The print out issued by Mr. Kadaraja is a post process after the submission of the pleadings by the applicant. That's why it carries with the case number, assigned judge and date of next schedule. So, the date of filing appearing into that print out, is the date the said case was paid its filing fees which according to the Judicature and Application of Laws (Electronic Filing) Rules, 2018 as per GN No. 148 of 2018 is the post admission stage unlike the former practice. That said, the print out relied out by Mr. Kadaraja is a misleading document to rely that the case was submitted on 1<sup>st</sup> March 2023. Since the date of submission on line has been established being on 24<sup>th</sup> February 2023 at 20:22:20 hours which according to the year calendar was Friday, then it was saved by the rules on the sense that it was not filed on weekend, which could have then been considered as filed on next working day (See Rule 21(1) and (2) of the Electronic Filing Rules, 2018). Moreover,

just by comment, the said document initiating the said reference application appears to be endorsed its admission by the registry officer on 27<sup>th</sup> February 2023. This is also debatable as it is not the actual date of submitting the case into our JSDS but on 24<sup>th</sup> February 2024. The physical presentation of the said pleading be it for scrutinizing its authenticity should not bear a different date from that submitted on line. Otherwise, this will bring confusion to the parties. In essence, what is submitted on line should bear similar details with that presented at our desk office (See Rule 17 of the Electronic Filing Rules which provides that **a party who has filed electronic documents shall be responsible for producing the originals of such documents and proving their authenticity**). The Deputy Registrars, RM I/Cs and DRM I/Cs should make sure that this confusion is controlled and not allowed to resurface into our registries. The original documents submitted at our registry offices should bear the same dates of the electronic filing submitted on line. This can otherwise be done by creativity of the Registry Officers of making a stamp with details reflecting details such as: date of filing on line, date of physical presentation, date of control number was generated, and date payment was done, etc.

nevertheless, with the ongoing developments of JSDS, I think this is a dying process no sooner than later.

Despite this observation, the first preliminary objection is dismissed for being brought without sufficient cause.

Regarding the second limb of Preliminary Objection that the application has contravened Rule 7(3) of GN 264 of 2015, for failure to serve the respondent, the explanations given by Mr. Frank Samwel that the respondent was avoiding signing the same, unless he first contacted his lawyer, since this statement has not been refuted by the respondent, is considered as true. In my considered view, that rule has been coached in a manner compelling the applicant to comply with service to the respondent of the case. Where reasonable explanations accompany such a non-compliance, the strictness of the rule is softened. In the circumstances of this case, the applicant has sufficiently accounted for that course to the satisfaction of the court. Equally, this objection is dismissed.

Having disposed of the preliminary objections, I now turn to the merit of the reference application. The first ground of reference is, the bill of costs at the Taxing Master was filed out of time. The respondent's counsel opposed this ground on the basis that as the Hon. Deputy Registrar had determined



the objection before him, that means he had sufficient material to justify the dismissal of the legal objection.

I have keenly scanned the parties' submissions on that. The vital question to consider is whether this ground is merited. In that consideration, I had to peruse the records of the said taxation cause to see its merit.

In my perusal to the Taxation Cause No. 3 of 2021, I have been able to see the court's ruling on preliminary objection regarding the taxation cause being filed out of time. In essence, the court's records establish that the said pleading commencing the bill of costs was endorsed being filed at the registry office on 2<sup>nd</sup> January 2021 and fees dully paid on 8<sup>th</sup> February 2021.

It was the submission of Mr. Frank Samwel before the taxing master that, the said Bill of Costs was filed in contravention of the law as it was filed out of time.

The reply by the respondent's counsel (Mr. Kipeja) on this issue before the Taxing Master as reflected on the proceedings dated 8<sup>th</sup> July 2021 was this, I quote:

*"I agree with what Mr. Frank submitted that the decree holder was supposed to file this application by 26/12/2020.*

*Following the amendments made under the Judicature and Application of Laws Act, (JALA), Electronic Filing Rules GN No. 148 of 2018 rules made under section 4 of the Principle Act, these rules provide for Electronic Filing of a case at the court that is commonly known as e-case filing. I therefore filed this application on 26/12/2020 at 11.36:15, therefore within time. And according to Rule 21 of JALA (Electronic Filing Rules 2018, we pray that the P.O be overruled. That's all.*

Mr. Frank maintained that there was no proof of the said assertion. In his ruling on this preliminary objection, the Taxing Master (Hon. Mbuya – Deputy Registrar), made the following remarks, I also quote:

*“This objection should not detain me much. I totally agree with the arguments by Mr. Kipeja. Mr. Frank ought to have known that nowadays filing is done electronically through e-case filing system managed through Judicial Statistical Dashboard System (JSDS) under the Judiciary of Tanzania Website. Therefore, this filing time, is automatically generated and saved through that system. Therefore, in computing the time limitation one has to bear in mind the time saved by the JSDS e-Filing system and not*

*otherwise. Mr. Frank Samwel misconceived himself by thinking that manual filing still exists at this Court. The sixty days available to file this bill of costs properly calculated ended on 26/12/2020 at 11:59:59 pm. Therefore, this application was filed within time. In view of the above this objection is hereby overruled for being devoid of merits."*

**MBUYA R.M**  
**DEPUTY REGISTRAR**  
**21/10/2021**

That is what transpired before the Taxing Master in respect of that objection and the ruling thereof. Mr. Frank has resurfaced the same issue before this Court now, being one of the grounds in this revision. The issue for consideration is whether the said preliminary objection was sufficiently responded by the Taxing Master for it to have no basis before this court now.

I am of the considered view that since my perusal to the Taxation Cause No. 3 of 2021, establish that the bill of costs was endorsed being filed at the registry office on 2<sup>nd</sup> January 2021 and fees dully paid on 8<sup>th</sup> February 2021, for the Deputy Registrar's findings or ruling on that to be relevant, there ought to have been accompanied by the supporting evidence that the said taxation cause was actually not filed on 2<sup>nd</sup> January 2021 but on 26<sup>th</sup>



December 2020 as alleged. The submission by Mr. Kipeja would have been convincing and relevant had there been proof of that assertion. That was not done. Thus, the ruling of the Hon Deputy Registrar in the absence of proof on that finding is highly questionable and thus forms no good basis of the decision as the respondent ought to have countered it by establishing proof of the electronic filing being done on 26<sup>th</sup> December, 2020 at 23.00hrs as alleged. In that absence, there is no justification by the Deputy Registrar to turn down that objection for being time barred.

At this reference proceedings, as well the respondent's counsel (Mr. Kadaraja) who seemed to be so conversant with the Judicature and Application of Laws Act, (JALA), Electronic Filing Rules GN No. 148 of 2018 rules made under section 4 of the Principle Act on e-case filing, who even tried to challenge this current application by providing a printout indicating that reference application No. 1 of 2023 is time barred; interestingly has himself failed to provide any proof even at this stage whether the said bill of costs whose decision is the subject of this revision was actually submitted on line on the alleged date of 26/12/2020 at 11:59:59 pm and not on 2<sup>nd</sup> January 2021 and fees dully paid on 8<sup>th</sup> February 2021 as per court record. What goes around, comes around. I am in agreement with MR. Frank that

there ought to have been actual proof of the said filing as rightly referred this Court to the case of **Samwel Nyala Nghuni and 5 others VS. Patrick Ososoro Nyamangulu**, Civil Reference No.21 of 2021, High Court\_Mwanza, where this court faced a similar objection and the court emphasized on the issue of proof.

The effect of determining a time barred case is nullity proceedings (see **Swilla Secondary School V. Japhet Petro**, Civil Appeal No. 362 of 2019). That courts or tribunals are enjoined not to entertain any matter which is time barred and in any event they do so, the Higher Courts must declare such proceedings and the consequential orders a nullity as I hereby do declare in this case.

On the second ground of reference, Mr. Frank Samwel learned advocate is of the view that the awarded bill of costs was so high and unlawful. He relied support from the 11<sup>th</sup> Schedule on item "K" of the G.N.264 of 2015. That the guiding schedule ought to be the 9<sup>th</sup> Schedule, he submitted Mr. Frank. On the other hand, Mr. Kadaraja was of the firm view that the 11<sup>th</sup> schedule used by the Deputy Registrar in computing the instruction fees was appropriate in the context of this matter.

In my considered view, the Bill of Costs emanated from Civil Case No. 2 of 2018 which contested a claim for a liquidated sum of Tshs 155,000,000/=. Thus, as this amount forms a liquidated claim by the applicant, the Taxing Master rightly in my view assessed the said bills under the Ninth Schedule of the GN 264 of 2015 which talks of scales of fees for contentious proceedings for a liquidated sum in original and appellate jurisdiction. What is provided under the Eleventh Schedule is scale of fees for contentious proceedings on non-liquidated claims. That is the main distinction between the scales of fees as provided in the Ninth Schedule and that of the Eleventh Schedule. Thus, the Taxing Master rightly used that schedule for assessing the said fees. Considering my findings in the first ground of reference, I will not go further to determine whether the said award was then excessive or not, but suffices to say that the applied Ninth Schedule of GN No. 264 of 2015, was proper in the circumstances of this case.

On the third ground of reference, the concern was that, the taxation of the case didn't consider the stage the case had reached. It has been the considered view of Mr. Kadaraja, that the instruction fees do not consider the time the case spent in court but the claims in the plaint.



taxation proceedings, award and other orders emanating therefrom are hereby quashed and set aside.

As it was the taxing master's fault for failure to determine the timeliness of the said application before it, parties shall bear their own costs. It so ordered.

Right of appeal is explained.

DATED at Shinyanga this 25<sup>th</sup> day of August, 2023.



**F.H. MAHIMBALI**  
**JUDGE**