

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

CIVIL REFERENCE NO. 08 OF 2022

(Arising from Taxation Cause No. 54 of 2021 and Land Case Appeal No. 53 of 2019 of the High Court of Tanzania at Bukoba Originating from Application No. 139 of 2018 of the District Land and Housing Tribunal for Kagera at Bukoba)

**SIMON KAJUGUSI BANDAULA..... APPLICANT
VERSUS**

STEWATH PETRO.....1ST RESPONDENT

MERNA EZERA.....2ND RESPONDENT

KOKUSIMA LAURIAN.....3RD RESPONDENT

RULING

Date of last order: 04.09.2023

Date of Ruling: 08.09.2023

A.Y. MWENDA, J

The Applicant brought this application seeking this Court's pleasure to revise the taxation order made by the Hon. Deputy Registrar of the High Court in his capacity as the taxing master, dated 13th of December 2022. It is brought under Order 7(1) and (2) of the Advocates Remuneration Order, 2015(GN. No. 264 of 2015).In support of the same, the Applicant swore an affidavit which contains eight(8) paragraphs.

Resisting this Application, the counter Affidavit sworn by Mr. Lameck John Erasto, learned Counsel for the respondent, was filed and served to the Applicant.

When the parties convened before the Court on 31st of July 2023, the Applicant appeared in person without legal representation whilst the respondents marshalled the legal services from one Mr. Lameck Joh Erasto, the learned counsel.

Before the Court could invite the parties for submissions, the Applicant prayed the hearing of the same to be by way of written submission. Since this prayer was not resisted by the adverse party, the scheduling order was made. On top of that the parties were directed to focus on one ground which is whether the Hon. Taxing Master had jurisdiction to entertain the said Application in the event where the Applicant had filed the notice of Appeal to the Court of Appeal. Each party complied to the scheduling order and the summary of their submissions is as appearing hereunder.

On his part, the Applicant gave a long and detailed written submission. However, for the sake of this Application, this Court is going to focus on the pivotal issue which is whether the Hon. Deputy Registrar sitting as a Taxing Master, had jurisdiction to entertain Taxation Cause No. 54 Of 2021. Regarding this issue the Applicant submitted that the Taxing Master had no Jurisdiction to entertain the Taxation Cause before him because there was a valid pending Notice of Appeal to the Court of Appeal filed the 5th of November 2021. While citing rule 83(1) of the Tanzania Court of Appeal Rules, 2009 [GN. 344 OF 2019] he asserted that since there is a pending notice of Appeal to the Court of Appeal, any dealing connected to it can only be transacted before the Court of Appeal and not otherwise. He also

submitted that the only thing that the Hon. Taxing Master ought to have done was to halt the hearing of bill of costs' proceedings and allow the appeal process to take place. To support this point, he cited the case of MATSUSHITA ELECTRIC CO. LTD VS. CHARLES GEORGE T/A G.G TRADERS, CIVIL APPLICATION NO. 71 OF 2001, NATIONAL INSURANCE CORPORATION VS. KWEYAMBAH QUAKER[1999] TLR 150, SERENITY ON THE LAKE LTD VS. DORCAS MARTIN NYANDA,CIVIL APPEAL NO. 01 OF 2019 and many more where it was emphasized that once there is a pending notice of appeal or an application for leave to appeal before the court of Appeal, it is not proper for the Taxing Officer to continue taxing the bill of cost while he do not know what would be the result of the court of Appeal decision. Further to that the Applicant emphasized that whenever there is a notice of Appeal, the High Court cease to have jurisdiction over the proceedings, the bill of cost inclusive. He supported this point by citing a number a cases such as M/S LAW ASSOCIATES ADVOCATES VS. M/S INTERNATIONAL POWER (T) LTD [2004] TLR 276, WILLIAM MUGURUSI VS. STELLA CHAMBA [2004] TLR 406, WALII HASSAN MIYONGA VS AARON KABUNGA, CIVIL REFERENCE NO. 05 OF 2021, REGISTERED TRUSTEE OF CATHOLIC ARCHDIOSESE OF ARUSHA VS. NESTORY MSOFE & 6 OTHERS, LAND REFERENCE NO. 3 OF 2018, to mention a few. He concluded his submission by stressing that once there is a notice of appeal, then this Court ceases to have jurisdiction on the matter.

In reply to this issue, Mr. Lameck John Erasto, learned Counsel for the respondent submitted that he conducted a research including viewing the Notice of Appeal and found that, although it was not served to them, the said notice was filed on 5th November 2021 with intent to challenge the judgment of this Court in Land Appeal No. 53 of 2019 dated the 12th of October 2021. The learned counsel blamed the Applicant for his failure to serve them with a copy of the said notice. He however conceded that so long as the point of existence of notice of appeal is cleared, then the Hon. Taxing master wouldn't have proceeded the taxation cause. In rejoinder, the Applicant submitted that since the learned counsel for the respondent did not oppose the fact that the Hon. Taxing Master entertained the taxation cause in question while the notice of Intention of Appeal to the court of Appeal had already been filed, then this Court had no jurisdiction to proceed with the said hearing. He then prayed the present Application to be granted.

That being the summary of the submissions by both parties, the issue for determination is whether the taxing master had jurisdiction to determine Taxation Cause No. 54 of 2021.

As I have stated earlier, before the hearing of taxation cause commenced the Applicant filed a notice of intention to appeal to the Court of Appeal against the judgment and decree of this court in Land Case Appeal No. 53 of 2019.

This Court is mindful on the position that once a party files a notice of appeal to the Court of Appeal, this Court (The High Court) is ousted of its jurisdiction. This

Position is propounded in many authorities without number. For example, in the case of MATSUSHITA ELECTRIC CO. LTD VERSUS CHARLES GEORGE t/a G.G TRADERS; Civil Appeal No. 71 of 2001, the Court of Appeal had these to say:

"Once a Notice of Appeal is filed, this court is seized of the matter in exclusion of the High Court except for applications specifically provided for such as leave to appeal, provisions of certificate of the point of law or execution where there is no order of stay of execution from this court."

The take from above is that such seizure of the jurisdiction is not absolute because despite filing the notice of intention to appeal to the Court of Appeal there are scenarios where this court (High Court) is retained with jurisdiction to entertain. These are:

- a) Application for leave to appeal the court of appeal,
- b) Application for certificate on point of law and
- c) **Application for execution where there is no order of stay of execution issued by the court of appeal.**

Of essence from the above exceptions is part (c) where the question to ask is if the application before the taxing officer was for execution to justify him entertaining the same. Having scrutinized this issue it came to the attention of this court that what was before the taxing master does not fall in the category of

application for execution. This is so because the application for taxation of Bill of Costs and application for execution are not one and the same thing. Although both are part and parcel of the decree they however differ as the application for taxation of the bill of costs precedes the application for execution.


On that basis therefore since the application before him was not for execution, then the taxing officers had no jurisdiction to entertain application for taxation of Bill of costs. As a form of execution of decree of the Courts, application for taxation of Bill cost can only be preferred upon finalization of an appeal before the Court of Appeal or upon withdrawal of the notice of intention to appeal to the Court of Appeal by the Applicant.


Since the notice of intention to appeal commences proceedings in the Court of Appeal, then the taxing master ought to have halted the hearing of the said application and/or advise the applicant to either withdraw the same with leave to refile pending to either final determination of the pending appeal to the Court of Appeal or withdrawal of the same by the applicant. Also see *SERENITY ON THE LAKE LTD V. DORCAS MARTIN NYANDA*, CIVIL REVISION NO. 1 OF 2019, CAT (Unreported) where the Court while citing the case of *TANZANIA ELECTRIC SUPPLY COMPANY LIMITED VS. DOWANS HOLDINGS S.A. (Cost Rica)* and *DOWANS TANZANIA LIMITED(TANZANIA)*, CIVIL APPLICATION NO. 142 OF 2012 (Unreported), held inter alia that:

*"It is settled law in our jurisprudence, which is not disputed by counsel for the applicant, that the lodging of a notice appeal in this Court against an appealable decree or order of the High Court, commences proceedings in the of Court. We are equally convinced that **it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter.**"*

Based on the above reasoning, since there is a pending Notice of Appeal to the Court of Appeal, then the Hon. Taxing master acted prematurely. As such I strike out the proceedings of Taxation Cause No. 54 of 2021 with leave to refile upon determination of the pending appeal before the Court of Appeal or upon withdrawal of the notice of appeal by the Applicant. On top of that, I hereby set aside the ruling and the order of taxing Master (Odira A Omworo) made on 13th December 2022. Costs to follow the event.

It is so ordered.


A.Y. MWENDA
JUDGE
08.09.2023



Ruling delivered in chamber under the seal of this court in the presence of Mr. Simon Kajugusi Bandaula the Applicant and in the present of Mr. Lameck John Erasto Learned counsel for the Respondents




A.Y. MWENDA

JUDGE

08.09.2023