

UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

MBEYA SUB REGISTRY

AT MBEYA

LAND REFERENCE NO 6 OF 2022

(Taxation cause no. 220/2021 of the District Land and Housing Tribunal for Songwe)

RENA JACKSON MWASHIUYA..... APPLICANT

VERSUS

YANGSON M. MPONDA..... RESPONDENT

RULING

Date of last hearing: 2/08/2023

Date of Judgment: 24/10/2023

Nongwa, J.:

This reference application was filed under order 7 of Advocate Remuneration Order, 2015 G.N published on 17th July, 2015 and other enabling provisions by way of chamber summons supported by an affidavit of one Rena Jackson Mwashuiya. The applicant is seeking to quash the taxing officer decision delivered on 10th March 2021 in taxation cause No. 220B which emanates from Land Application No.220 of 2021 of the District Land and Housing Tribunal of Songwe at Mbozi.

It was stated in applicant's affidavit that he was the applicant in application No. 228 of 2020 at District Land and Housing Tribunal for Mbeya at Mbeya which was struck out with cost. Surprisingly the decree holder filed an application No.220B of 2021 for bill of costs claiming Tshs.3,660,000/= arising from the application No. 220 of 2021 at the District Land and Housing Tribunal for Songwe at Mbozi the matter which is unknown to the applicant and on 10/09/2021 the taxing officer granted the decretal sum of Tshs.2,250,000/= The applicant disputes the whole bill claiming irregularities and illegalities as follows;

- (i) That the applicant never stood in the case against the respondent in any way hence the respondent has no locus standi in the matter.
- (ii) That the Taxing Officer granted the Decree Holder to be paid Bill of Costs which alleged to arising from costs in the District Land and Housing Tribunal for Songwe at Mbozi. However, there are no such case heard between applicant and the Respondent.
- (iii) That the Taxing Officer accepted applicant/Decree Holder's Bill of Costs without sufficient proof.

Respondent in counter affidavit stated that the contended case No. 228 of 2020 has nothing to do with respondent as the case between applicant and respondent was application No. 220 of 2020 and the application was dismissed for want of prosecution with costs. That the applicant is aware with that case.

During hearing both parties were unrepresented and application was argued orally.

The applicant submitted that the amount of 2,250,000/= she was ordered to pay is invalid because she was not summoned to appear for hearing enter parties in application No. 220 of 2020.

On reply respondent submitted that he summoned respondent and she appeared together with her advocate and it was awarded Tshs.2,250,000/= from Tshs.3,600,000/= after the advocate contest before tribunal. He insisted that the amount awarded is valid, the applicant opened a case against him and his fellows, she did not prosecute her application hence the same was dismissed for want of prosecution with costs. The Respondent applied and was awarded cost.

The applicant on rejoinder insisted invalidity of costs awarded alleging to have not been summoned for the same.

I have gone through court records, application and submissions made by parties.

I have gone through court record and found that application No. 220B was heard on 10/9/2021, on that date, the applicant appeared at tribunal together with her advocate Bedson Kileo, through her advocate, applicant argued application for bill of cost but the tribunal ruled in favour of the respondent. I find that the allegation that the applicant was not summoned to appear for hearing enter parties in application for costs, as stated in the 1st point lacking merit.

On the 2nd point, applicant claimed that there was no case at district land and housing tribunal for Songwe at Mbozi that was heard between applicant and respondent which gave rise for bill of cost granted by taxing master. Going through court record, I find that there was a Land Application No. 220 of 2020 which was filed by Lena Jackson Mwashuiya (applicant by then) against Yangison Mwangulila Mponda (1st Respondent) Azizi Zakalia Mponda (2nd respondent) and Lau Juma Mkondya (3rd Respondent). The application was dismissed on 22/3/2021 for applicant's failure to prosecute her case (she had not appeared at tribunal three times). Tribunal ordered 1st respondent to be paid half of cost by applicant because he was attending the matter. I find this ground too unmerited.

On the last ground the applicant contents that taxing officer accepted applicant/deeree holder's bill of costs without sufficient proof. I

have considered the court records and found that after the applicant filed land application No. 220 of 2020, respondent engaged advocate Beatrice Rukamilwa to defend his case, he filed written statement of defence, on 7/12/2020 respondent appeared before trial tribunal together with his advocate and on 22/3/2021 the date which application No. 220 of 2020 was dismissed the respondent was in attendance. This proves that respondent incurred cost on Application No. 220 of 2020 including transport, drafting documents, court fees of filing documents, engaging an advocate. Moreover, there are receipts in the records evidencing his claims for costs.

In application No. 220B of 2020 for costs, respondent through his advocate prayed to be paid Tshs.3,660,000/= as a bill of cost but trial tribunal considered circumstances of case and awarded only Tshs.2,250,000/=.

It is trite law that, taxation of costs is entirely a matter of opinion based on experience. A court will not therefore, interfere with the award of a taxing officer, save where the award is so high or so low as to amount to injustice to one party or the other. In the present reference I find that the award was just and reasonable. I find no need to interfere with trial tribunal finding on bill of cost.

I find that this land reference lacks merit hence dismissed. Based on the circumstance of this case I order no costs.



V. M. Nongwa
Judge
24/10/2023

Dated and delivered this 24th October, 2023 in presence of both parties.



V. M. Nongwa
Judge
24/10/2023