

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CIVIL REFERENCE NO. 13 OF 2022**

**(Taxation Cause No. 2 of 2022 emanating from Misc. Civil Application No.  
6 of 2021 in the Resident Magistrate Court of Manyara)**

**SEBASTIAN MACHA.....APPLICANT**

**VERSUS**

**OVERMINGI ISOWE.....1<sup>ST</sup> RESPONDENT**

**RICHARD MINJA.....2<sup>ND</sup> RESPONDENT**

**RULING**

**24/11/2023 21/12/2023**

**GWAE, J**

Dissatisfied by the decision of the taxing officer, the applicant has filed this application praying for an order of this court to set aside and quash the decision of the taxing master Hon. Kimario, in Taxation Cause No. 2 of 2022.

The application was brought under rule 7 (1) (2) of the Advocates Remuneration Order G.N 264 of 2015 and the same was supported by an affidavit of the applicant's counsel Ms. Fatuma Amiri. In his application, the applicant challenges the decision of the taxing master striking out the

bill of costs on the reason that, the said decision was irregular illegal and it was procured without justification.

Opposing the application, the respondent through his advocate one Arnold Anthony Tarimo filed his counter affidavit. He supported the decision of the taxing master by stating that, the taxing master was correct to strike out the bill of costs on the reason that the same emanated from Misc. Civil application No. 06 of 2021 which was an application for stay of the execution of the judgment and decree in Civil Case No. 01 of 2020.

It was further stated that the said Civil Case No. 01 of 2020 had been nullified by the judgment of this court in Civil Appeal No. 25 of 2025. Consequently, the application for stay of execution was withdrawn as there was nothing for staying. The respondents also contended that the bill of costs having emanated from a nullity proceeding, hence, the taxing master was correct to strike out the matter.

The learned counsel Mis. Fatuma represented the applicants when the matter was called on for hearing. On the other hand, the respondents enjoyed legal services of advocate Arnold Tarimo. With leave of the court, the application was disposed of by way of written submissions, which I shall consider them accordingly.

I have carefully examined this application and the parties' written submission and the following were observed; that this application has its origin in Civil Case No. 01 of 2020 filed in the Resident Magistrate Court. It was followed by Civil Appeal 25 of 2021 filed in this court whose decision nullified the proceedings judgment and decree in Civil Case No. 1 of 2020. Nevertheless, at the time the appeal was lodged to this court, the applicant also filed an application for stay of execution where the respondent raised three points of preliminary objections, which were all overruled with costs. Following the order overruling the preliminary objections with costs, the applicant filed bill of costs, which was struck out. Thus this reference application.

With regard to the above observation by this court, I need not say much as the records are quite clear that, this court in Civil Appeal No. 25 of 2021 nullified the proceedings, judgment, decree and any other orders practically including the application for stay of execution whose incidental orders also suffers the same. Therefore, the bill of costs arising from the application for execution also lacks legs to stand as correctly submitted by the respondent counsel that, it is founded from an application whose main case has already been declared a nullity by this court.

I have observed that Mis. Fatuma in her submission argued that the preliminary objections were distinct and it had a separate ruling, with due respect I find this argument out of place as the preliminary objection was not raised from the air but it arose from the application for stay of execution whose main case was nullified on appeal.

That said, I find no merit in this application. Consequently, the application is dismissed in its entirety with costs.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**21/12/2022**