

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

LAND REFERENCE NO. 05 OF 2023

(Arising from Bill of Costs NO. B of 2023 from District Land and Housing Tribunal of Mbeya at Mbeya on the Land Application No. 151 of 2019 before T. Munzerere - Chairman)

NATIONAL BANK OF COMMERCE LTD APPLICANT

VERSUS

OSCAR GREYSON MZAVA RESPONDENT

RULING


Date of last order: 11/10/2023

Date of judgment: 05/12/2023

NGUNYALE, J.

By way of chamber summons the applicant NATIONAL BANK OF COMMERCE LTD preferred the present application under Order 7 (1) and (2) of the **Advocates Remuneration Order** GN 264 of 2015 seeking the following orders against the respondent Oscar Greyson Mzava; -

- 1. That the court be pleased to grant orders for reference of the decision of the taxing master, set aside or quash the ruling in respect of the Bill of Costs No. B of 2023 arising from Application No. 151 of 2019 before Hon. T. Munzerere delivered on 21st June 2023.*
- 2. Costs for this application be borne by the respondent.*
- 3. Any other relief (s) the court will deem fit to grant.*



The application was supported by an affidavit which was dully sworn by Africa Mazoea the advocate dully instructed by the applicant. He deponed that the respondent filed a bill costs. Upon successful service the Application No. B of 2023 (Bill of Costs) was set for hearing by way of written submission. The applicant successful filed his submission in chief on 15th June 2023 however he could not serve the respondent who was expected to reply to it. The respondent could not file his reply because he was not served with the necessary documents but the tribunal proceeded to pronounce ruling on 21st June 2023 granting the bill of costs to the respondent without affording the applicant with a right to be heard. The taxing master taxed the same to a tune of 18,864,000/= . The ruling was not supplied to the applicant until when he filed this reference. The applicant depones further that the amount taxed is exorbitant thus he avers that unless the reference is granted, the applicant stands to lose an exorbitant amount of money as costs and her constitutional right of representation and the right to be heard.

The respondent filed a counter affidavit to resist the application. According to the counter affidavit sworn by the respondent he denied the application alleging that the applicant wilful waived his right to fie the respective submissions during hearing of the bill of costs.

A handwritten signature in black ink, appearing to be 'Africa Mazoea', located at the bottom right of the page.

The parties filed the application for and against the application where by the applicant argued that his right to be heard was denied because of failure by the respondent to supply him with the relevant submissions timely. His complaint was strongly contested by the respondent as he deponed in the counter affidavit.

Having in mind the submission of the parties, the issue to be determined by the court is whether the applicant was denied the right to be heard.

This being the case of bill of cost the law is very trite that the proceedings in taxation of bill of costs are not a trial, therefore the normal hearing procedures as in other trial are not followed. This means that there is no need to call witnesses, no affidavits, discoveries, interrogatories or inspections allowed. Thus, the taxing master may only hear ex parte and allow the bill of cost applied for, without hearing the other party. This is provided under Order 68 of the Advocates Remuneration Orders, which provides;

"The taxing officer shall have power to proceed to taxation ex parte in default of appearance of either or both parties or their advocates, and to limit or extend the time for any proceedings before him, and for proper cause to adjourn the hearing of any taxation from time to time".

A handwritten signature in black ink, appearing to be 'J. J. J.', located at the bottom right of the page.

Basing on the above provision the taxing officer was right to proceed ex parte. I therefore concede with what was submitted by the respondent counsel.

But the issue is whether the bill of cost was in accordance with the law. In this case at hand the respondent claimed that the schedule to file submission was that the decree holder was to file on 15/06/2023, the judgement debtor was to file on 18/06/2023, and rejoinder if any on 20/6/2023 and the ruling to be delivered on 21/6/2023. But in this case at hand the respondent filed his submission before the tribunal as scheduled but the applicant was not served with the same. On 19/06/2023 the respondent was served with the submission in chief out of the prescribed time for filing he reply. It was ordered for him to file his reply on 18/6/2023. The applicant argued that he failed to submit the same as scheduled. In his counter affidavit the respondent argued that 18/06/2023 was Sunday there is no way the applicant would have filed his submission on the said date as there was no court business on Sunday. Having been served with the submission on 19/6/2023 the applicant was having an opportunity to file his submission on 19/6/2023 or even on 20/6/2023 which was already out of time. The proper time was 18/06/2023.

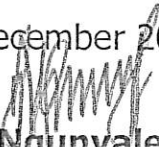
A handwritten signature in black ink, appearing to be 'S. M. Singh', written in a cursive style.

Basing on what was stated by the parties' counsel it is my considered view that the applicant deserves a benefit of doubt due to the delay to be supplied with the submission. It was the fault of the court to schedule the filing of the submission on Sunday while it was not possible for the applicant to file the same. The mistake done by the tribunal should not punish the applicant but shall enable him a benefit for the ends of justice as far as the right to be heard is concerned.

Having considered the problem of the scheduling order of the submission, I find no reason to determine as to whether the Bill of cost was properly drafted or not. The same will be rectified in due course if the parties will find it necessary to move the tribunal on that matter.


Therefore, for the interest of justice the orders of the taxing master in respect of the bill of costs are hereby quashed and set aside. Let the file be returned to the DLHT for the applicant to file his submission and the taxing officer to determine the bill of cost after hearing both parties. Order accordingly.

Dated at Mbeya this 05th day of December 2023.


D. P. Ngunyale
Judge

Ruling delivered this 5th day of December 2023 in absence of both parties.




D. P. Ngunyale
Judge