

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

**IRINGA SUB REGISTRY**

**AT IRINGA**

**MISC. LAND APPLICATION NO. 18 OF 2023**

*(Originate from the District Land and Housing Tribunal at Iringa in Taxation Cause No. 163 of 2021)*

**ERASTO NGAILO.....APPLICANT**

**VERSUS**

**BLASTUS ALLEN MGIMWA.....RESPONDENT**

**RULING**

**Date of the Last Order: 07.05.2024**

**Date of the Ruling: 31.05.2024**

**A.E. Mwipopo, J.**

Erasto Ngailo, the applicant, filed the present Application under Order 7(1) of the Advocates Remuneration Order, G.N. No. 263 of 2015. The application is brought by chamber summons supported by an affidavit of counsel for the applicant. The applicant is seeking for the following orders:-

- 1. That, this honourable court be pleased to reassess Taxation cause No. 163 of 2021, and reverse the order of Hon. A.J. Majengo,*

*Chairman, which awarded the applicant cost to the extent of Tshs. 280,000/=, and instead order the applicant to be reimbursed by the respondent a total sum of Tsh. 7, 076, 000/= as the cost he incurred in Misc. Application No. 81 of 2020.*

- 2. In alternative to the first player, this honourable court is pleased to substitute the order of the District Land and Housing Tribunal for Iringa dismissing Taxation Cause No.163 of 2021, with the order to strike out the same.*
- 3. That, the cost of the application be provided for.*
- 4. Any other order (s) this honourable Court may deem fit to grant.*

The application was opposed by the counter affidavit sworn by Blastus Allen Mjimwa, the respondent.

Brief facts leading to this application as per available records is that sometime in 2020, the applicant lodged a suit at Iringa District and Housing Tribunal which was registered as Land Case No. 81 of 2020. After a full trial, the matter was decided in the applicant's favour. The applicant filed in the trial Tribunal Taxation Cause No. 163 of 2021 claiming the total amount of Tsh. 7,076,000.00/= as a bill of cost in the main suit. During the hearing of the Taxation cause, the counsel for the respondent (the judgment debtor) raised an objection on the point of law that the application for the bill of cost contravened order 64 (1) of the Advocate

Remuneration Order as the advocate who prepares the bill of cost is not the one who represents the applicant in the trial tribunal. The taxing master agreed with the counsel for the respondent and awarded a total of Tshs. 280,000/= as the only cost proved to be incurred by the advocate who represented the applicant. The remaining amount claimed by the applicant was taxed off for the reason that the counsel who prepared the bill of cost was not the one who represented the applicant during the trial.

Dissatisfied by the decision of the trial tribunal, the respondent herein filed this application for reference praying to reassess the order of the Taxing Master and order the respondent to pay a total sum of Tshs. 7, 076, 000/= as the cost incurred in the main suit (Misc. Land Application No. 81 of 2020 in the Iringa District Land and Housing Tribunal). In the alternative, the counsel for the applicant prayed for the High Court to substitute the order of the Iringa District Land and Housing Tribunal dismissing some of the claims in the Taxation Cause No.163 of 2021, with the order to strike out the same.

When this application came up for hearing, the applicant was represented by Mr. Noah Utamwa, the learned advocate, whereas the respondent was represented by Ms. Enesia Kita, the learned advocate.

In his submission, Mr. Noah Utamwa adopted the affidavit sworn by Advocate Dr. Utamwa supporting the application and argued that the Taxing Master erred in awarding the applicant Tshs. 280, 000/=, instead of 7,076,000/= claimed by the applicant for the reason that the counsel who prepared the bill of cost is not the one who represent the applicant during the trial. He said the advocate who represented the applicant and the advocate who drafted and filed the bill of cost were working in the same office called Luke Law Chambers. The engagement letter prepared by Advocate Amandi Isuja display address of the said law chamber which is P. O. Box 1549, hence bill of the cost was not contrary to Order 64(1) of the Advocate Remuneration Order No.263 of 2015.

As an alternative, Mr. Noah Utamwa said the Taxing Master was wrong to dismiss part of the bill of cost because the advocate who prepared such a bill of cost was not the one who represented the applicant in the trial tribunal. He said the remedy is to strike the application and not to dismiss part of the claims. He prayed for the High Court to re-assess the decision of the Taxing Master and order the respondent to pay the total amount of Tshs. 7,076,000/=. As an alternative prayer, he asked this Court

to substitute the Taxing Master order of dismissal with the order to strike out the Taxation Cause for incompetence.

Opposing the application, Ms. Enesia Kitta, the advocate for the respondent, disagreed with what was claimed by the respondent. She said that it was Advocate Amandi Isuja who represented the applicant in the main suit and not Lupyana Massawa from Luke Law Chamber. The two advocates are working in different offices. The engagement letter prepared by Advocate Amandi Isuja does not show the name of Luke Law Chambers. The advocate who prepared the bill of cost is not the one who represented the applicant in the main suit. The same is contrary to Order 64 (1) of the Advocate Remuneration Order. The Taxing Master properly awarded Tshs. 280,000/= to the applicant. She prayed for this court to dismiss the application with cost.

Having gone through the submission of the learned advocates as well as perusing the necessary documents filed before the court I find that the Issue for determination is whether this application is meritorious.

It is undisputed that the applicant successfully filed Land Case No.81 of 2020 in the Iringa District and Housing Tribunal, and was awarded the cost of the suit by the trial Tribunal. He filed Taxation Cause No.163 of

2021. in the same Tribunal claiming for Tshs. 7,076,000/= as the bill for cost, but he was awarded 280,000/= by the Taxing Master for the reason that the advocate who lodged the application was not the one who represented the applicant during the main application.

It is a trite law that the bill of cost has to be prepared by the decree-holder or the advocate who represented the decree-holder. Where there has been a change of an advocate or more than one advocate has represented the decree-holder in the suit in respect of which costs have been awarded, the advocate finally on the record is required to prepare the bill of cost for the whole matter. The requirement is stipulated under Order 64 (1) of the Advocates Remunerations Order, G.N. No. 263 of 2015, which provides as follows:-

*"64 (1). Where there has been a change of an advocate or more than one change of advocates, the advocate finally on the record shall draw a single bill for the whole matter in respect of which costs have been awarded."*

The above-cited order is coached in mandatory terms meaning where there has been a change of an advocate or more than one advocate has represented the decree-holder in the main suit which costs have been

awarded, the advocate finally on the record shall prepare the bill of cost for the whole matter. Failure to do so renders the bill of cost incompetent for contravening the order.

In the case at hand, the record of the trial tribunal reveals that the applicant was represented by advocate Amandi Isuja in the main suit. The bill of cost in the Taxation Cause was prepared by Advocate Lupiana Masawa from Luke Law Chambers. The engagement letter prepared by Advocate Amandi Isuja does not show the name of the firm he was working from. The respondent claimed that advocates Amandi Isuja and Lupiana Maswa are working together in Luke Law Chambers, unfortunately, there is nothing on record to support the claim. The use of the same box office number is not proof that both advocates are working in the same law firm. I find that the Taxing Master properly found that Advocate Amandi Isuja and Advocate Lupian Masawa were not working in the same law firm. Thus, the application for the bill of the cost was bad for being prepared by the advocate who did not represent the applicant (the decree-holder) in the main suit contrary to Order 64 (1) of G.N. No. 263 of 2015.

The remedy where the application is incompetent for contravening the law is to strike out and not dismiss it or proceed with determining the

matter as it was done by the Taxing Master in this case. A similar position was stated in **Yusuph Shaban Matimbwa versus Exim Bank (T) Limited & 2 others, Civil Application No.162/16 of 2021, Court of Appeal of Tanzania at (Unreported)**, where the Court of Appeal held:-

*"An incompetent matter before the court deserves to be struck out as it is not capable of being dismissed".*

As the taxation cause was incompetent, the Taxing Master was supposed to strike out the application. It was an error on the part of the Taxing Master in this case to determine the case on merits by assessing the bill of cost where he dismissed part of the claims.

Therefore, I find the application for reference to have merits, and I allow it. I hereby quash and set aside the order of the Taxing Master as the bill of cost, and substitute with an order of striking out the entire application for the bill of costs. As the application originates from the taxing cause, each party has to bear its own costs of this application for reference. It is so ordered accordingly.

**Dated at Iringa this 31<sup>st</sup> day of May, 2024.**





  
**A.E. MWIPOPO**

**JUDGE**