

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

**SHINYANGA SUB REGISTRY**

**AT SHINYANGA**

**CIVIL REFERENCE NO. 05 OF 2023**

*(Originating from Misc Civil Application No.49 of 2022, Bill of Costs No. 11/2022 and Civil Case No. 5 of 2017)*

**JOYCE MWANG'ONDA ..... APPLICANT**

**VERSUS**

**ZANZIBAR INSURANCE CORPORATION .....1<sup>ST</sup> RESPONDENT**

**TITO THEOBALD .....2<sup>ND</sup> RESPONDENT**

**THEOBALD TITUS ISAKA .....3<sup>RD</sup> RESPONDENT**

**RULING**

*17<sup>th</sup> April & 23<sup>rd</sup> May 2024*

**F.H. MAHIMBALI, J.**

Vide Misc. Civil Application No. 49 of 2022, the applicant was praying for extension of time to file bill of costs pursuant to the judgment and decree of this Court vide Civil Case No. 05 of 2017, in which amongst other things, the applicant was awarded with an order of costs.

Now instead of ruling whether there are sufficient grounds for extension of time, the taxing master ruled that, in his reading the GN 264 of

2015 does not have provisions for the extension of time for filing bill of costs. Thus, struck out the matter. The reasoning the Hon. DR (Taxing Master) made was this, whereas the application for reference is worded in a manner that an extension of time to file reference application is permissible, there is no similar provision premising the extension of time to file an application for bill of costs.

During the hearing of the application, Mr. Shabani Mvungi learned advocate, appeared for the applicant whereas, for the respondents none appeared save Mr. Kavughushi learned advocate who seemed to hold brief of Mr. Salim for the first respondent but asking for another hearing date without assigning a sound reason for the said adjournment. Nevertheless, neither the first respondent nor any of the remaining respondents filed the counter affidavit against the said application. This Court then ordered the hearing of the application to proceed as scheduled.

Mr. Mvungi while adopting the applicant's affidavit in support of the application, had nothing more but just pressed that the prayers sought in the chamber summons be granted as prayed as they are not contested.

When invited to address the court on any legal issue against the application, Mr. Kavughushi who was holding brief of Mr. Salim for the first respondent declined to say anything, arguing that he had no instructions to proceed save for the prayer of adjournment. As to why an adjournment, there was no good cause stated warranting the further adjournment.

I have keenly followed the coram of this application from its inception to the date of last adjournment. The application was filed on 13<sup>th</sup> September 2023, and the first orders were issued on 26<sup>th</sup> September 2023 and the matter was first set for hearing on 15<sup>th</sup> November, 2023 where all parties made appearance. The matter was then adjourned to 14<sup>th</sup> February 2024 as on that day, the trial judge was in High Court Criminal Sessions at Kahama. On the subsequent date (i.e 14<sup>th</sup> February 2024), none of the respondents was in attendance. Mr. Mvungi for the applicants addressed the court that, all the respondents are dully served, and he supplied proof of returned summons for that effect. Moreover, for want of instructions to proceed with the hearing, Mr. Mvungi prayed for an adjournment. Reluctantly, I adjourned the matter to 18<sup>th</sup> April 2024.

Now when the case came for hearing on 18<sup>th</sup> April 2024, Mr Mvungi appeared for the applicant, whereas Mr. Kavughushi appeared for the first

respondent but holding brief of Mr. Salim with the prayer of adjournment. Mr. Mvungi on his part was ready for hearing but prayed for the matter to proceed ex parte against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as per proof of service. When Mr. Kavughushi was asked as to why an adjournment, he had nothing substantial to convince the court. I then ruled that the matter to proceed with the hearing as scheduled as stated above.

So, the issue for consideration here is whether the Taxing Master was justified not to consider the merit of the application on the ground that as per law, the bill of costs application cannot be granted with an extension of time as ruled. I have sufficiently scanned the applicant's affidavit in support of the application and the relevant court records. The vital issue to consider is whether this reference application is brought with sufficient cause.

It is true that the GN 264 of 2015 (The Advocates Remuneration Rules) does not have provisions warranting for extension of time to file bill of costs. Does it mean then that the doors are closed where there is/are sufficient cause (s)? Mindful of the fact that an extension of time is court's discretionary power, it is only granted where there are sufficient causes or good causes warranting the same. Thus, for the court to deny or allow such an application, must do so judiciously.

According to the application filed before the Taxing Master for granting the extension of time, the enabling provisions were section 14(1) & (2) and Section 21(2) of the Law of Limitation Act, Cap 89 and section 95 of the Civil Procedure Code, Cap 33 and any other enabling provisions of the law. Were they the proper enabling provision of the law?

Section 14(1) of the Law of Limitation Act, provides:

*"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application"*

Reading part III of item 21 of the Schedule to the Law of Limitation Act provides that an application under the Civil Procedure Code, the Magistrates' Courts Act or **other written law for which no period of limitation is provided** in this Act or any other written law, its time limit is 60 days. Equally, the filing of an application for bill of costs is 60 days as per order 4 of GN 264 of 2015. Thus, so long as the Taxing Master was rightly aware

that there is no door for extension of time provided in the GN 264 of 2015 (Advocates Remuneration Order), it didn't mean that the doors were completely shut off on that right. The interpretation of section 43 (f) and section 46 of the Law of Limitation Act by the Taxing Master, in my considered view was a misconception in understanding that legal provision. What actually was meant, is "**the time limitation**" for filing such a case or an application (in its commencement) and not a bar for an extension of time upon expiration of the said time limitation.

The catch word under section 46 of the Law of Limitation Act is "***unless the contrary intention appears in such written law, and subject to the provisions of section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act***". In my reading of order 4 of the GN 264 of 2015, I have not encountered that contrary intention which bars the extension of time as expressly stated by the Law of Limitation Act from coming into play. To condone the view as aired by the Deputy Registrar at his capacity as Taxing Master is to go against the spirit of the law as proclaimed by section 14(1) of the said Law of Limitation Act "***Notwithstanding the provisions of this Act.....***". Thus, it was an error to rule that the court had no powers to extend time simply because

it is not stated so by the said GN 264 of 2015 as one law is not used in isolation of others. Reading the two laws conjunctively, you will find that it is permissive.

As regards to the legal issue whether the lodgment of notice of appeal automatically stays an application of bill of costs, I am of the considered view that just as an appeal does not stay execution of a decree, equally it does not stay an application for bill of costs. However, if there is proof of the lodgment of the said notice of appeal and the procession of it, then it is advisable that bill of costs should stay to pave way of the outcome of the intended appeal. This is because, as per law, costs are taxed by the highest court in hierarchy if the same is attempted to reach there. Thus, whatever an outcome of the intended appeal, it is expected that costs will be awarded; and the taxing court is that last court to determine the matter. I say so, because there cannot be segments of bill of costs by one court and another if the matter has ended to the superior court. That means, if a matter has passed through from the trial court (say primary court and finally reaches to Court of Appeal), if each court made an order for costs as per its respective decision, the last court's order on costs is the one to be taxed and the taxing court is that last court. This is opposite to an execution application as it is

only executed by the court that passed the decree (trial court) and not the last court that determined the appeal.

All this said and done, the decision of the Deputy Registrar (Hon. Warsha Ng'humbu) denying consideration of the application for extension of time to file bill of costs on legal reason, is hereby quashed and set aside. In lieu thereof, as it was not determined on merit, I return the application to another DR in office (Asha Mwetindwa) for her to determine the merit of the application pursuant to the order of this court. Parties shall bear their own costs.

It is so ordered.

DATED at SHINYANGA this 23<sup>rd</sup> day of May 2024.



**F.H. MAHIMBALI**  
**JUDGE**