

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**DAR ES SALAAM SUB REGISTRY**  
**AT DAR ES SALAAM**

**CIVIL REFERENCE NO. 728 OF 2024**

*(Arising from Misc. Application No. 457 of 2023, Civil Revision No. 32 of 2021)*

**SHAMTE KHATIBU.....APPLICANT**

**VERSUS**

**ROBERT CHARLES (Administrator of the**

**Estate of the late Charles Moses) ..... RESPONDENT**

**RULING**

**29th May & 19th June, 2024.**

**KIREKIANO, J.:**

On 17.02.2023, this court condemned the respondent to pay costs in civil Revision no. 32 of 2021. It appears the applicant did not file the taxation proceedings in time. In Misc. Civil Application No. 457 of 2023, the applicant made an application to this court under section 14 (1) of the Law of Limitation Act seeking an extension of time to file a bill of Cost regarding the said order in Civil Revision No. 32 of 2023.

The application was heard and dismissed by hon. Luambano- Deputy Registrar. Aggrieved by that decision, the applicant has now preferred reference to this court (sic) **under orders 7 (1) and (2) of the Advocates**

**Remuneration Order, Government Notice No. 264 of 2015.** According to the chamber summons filed by the applicant, the same has prayers thus;

- 1. That the applicant, being aggrieved with the decision of the taxing officer, moves the Hon. Court to invoke its reference powers to quash and set aside the decision of the said taxing officer made in the Misc. Civil Application no. 457 of 2023 dated 22.12.2023.*
- 2. Costs of the application*
- 3. Any other or further order the Hon. Court shall deem just to grant in favour of the Applicant.*

When this application was scheduled for hearing, the respondent raised a preliminary objection, asserting that the application is legally incompetent as the Court has not been properly moved.

The preliminary objection was heard by way of written submissions, with both parties adhering to the filing schedule. The applicant was represented by Mr Juma Nassoro, while the respondent chose to fend for himself.

In support of the objection raised, the respondent submitted that this Court is not moved correctly because the reference was incorrectly preferred under orders **7(1) and (2) of the Advocates Remuneration Order, Government Notice No. 264 of 2015.** He argued that the application is

against the decision of the Deputy Registrar refusing to grant an application of enlargement of time which was made under Section 14 (1) of the Law of Limitation Act. In this, the purported Civil Reference did not emanate from a decision of a “**taxing officer**” to be subjected to reference in terms of Order 7 (1) and (2) of the Advocates Remuneration Order, GN 264 of 2015.

According to him, the applicant ought to have preferred an appeal against the decision of the Deputy Registrar to the Court of Appeal instead of the application for reference before this Court, which is improper and incompetent to entertain the same.

He insisted that the provisions of Section 5 (1) (b) (ix) of the Appellate Jurisdiction Act (Cap 141 R.E 2019) clearly say that an appeal against any order of the High Court made under Order XLIII, Rule 1 of the Civil Procedure Code lies to the Court of Appeal. He referred to the case of **Fransisca Kokuganywa Alfred v Mussa Saleh & Another (Civil Application No. 270/17 of 2022) (2024) TZCA 75 (20 February 2024)** at pg. 9,10,11, and 12 of the ruling of the Court to the effect that the impugned decision of the Deputy Registrar can not be legally referred to the Judge of the High Court as it as if it was a decision of a taxing officer in terms of Order 7(1)

and (2) of the Advocates Remuneration Order, Government Notice No. 264 of 2015. He thus prays the same to be struck out or dismissed with costs.

In his reply, Mr. Said Nassoro said the preliminary objection is misconceived. He submitted that **Section 5(1)(b)(ix) of the Appellate Jurisdiction Act** gives powers to the Court of Appeal to hear appeals against orders made under Rule 1 Order XLIII of the CPC. He argued whether the impugned registrar ruling subject of this reference was not made under the provisions of Order 1 Rule XLIII of the CPC.

He submitted that reading Rule 1, order XLIII, no provision provides an order for an extension of time to file a bill of costs, which was the case before the registrar. Therefore, one cannot invoke the provisions of Section 5(1)(b)(ix) of the Appellate Jurisdiction Act to go to the Court of Appeal by way of appeal against the order which was not envisaged under the provisions of Rule 1 Order XLIII of the CPC.

He submitted that bills of costs are matters determined by the registrars. He also argued without citing any law that applications for an extension of time to file bills of costs, once filed in Court, are assigned to the registrar for determination. He argued that the application is heard by the registrars, as he hears the bills of costs.

He submitted that the cited case of **Fransisca Kokuganywa Alfred (supra)** is distinguishable from the facts of this case. In the cited case, the Court dealt with matters of execution, the matters envisaged under Rule 1 Order XLII, in which one party was dissatisfied with the execution Order, which is not the issue in this reference.

On the other hand, Mr. Nassoro ostensibly posed an objection to the applicant objection arguing that the same was improperly drawn by the respondent.

In a short rejoinder, the respondent submitted that the applicant's counsel has conceded to the point that the decision of the Deputy registrar was not that of the taxing officer, hence Civil Reference under Order 7 (1) and (2) of the Advocates Remuneration Order before this Court is incompetent.

He argued that since the applicant has raised a new issue concerning the advocate, an administrator, he sees no reason to discuss it as it is not a party to the preliminary objection.

On my part, I wish to say in a few words that there can not be an objection against an objection. Where a party raises a preliminary objection in the proceeding; the court is enjoined to determine the same on merit

unless the other part concedes to the same and the court will make appropriate orders. As such, the other party is restrained from such acts that will pre-empt the same and as such the part is equally restrained from posing another objection before the objection is determined. This position was elucidated by the court of appeal in **Mary John Mitchel v. Sylvester 12 Maghembe Cheyo and Others, Civil Application No. 161 of 2008 (unreported)**, where it was emphasised that;

*"This Court has said in a number of times that it will not tolerate the practice of an advocate trying to pre-empt a preliminary objection either by raising another preliminary objection or rectifying the error complained of".*

With regards to the objection posed by Mr Nasoro, I will thus end here and proceed to resolve the objection posed by the respondent.

I have read between lines the provision of orders 7(1) and (2) of the Advocates Remuneration Order, which states as follows: -

*7.-(1) Any party aggrieved by a decision of the **Taxing officer** may file a reference to a judge of the High Court.*

*(2) A reference under order (1) shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days from the date of the decision. (Emphasis supplied)*

The issue to be determined is whether the decision of the Deputy Registrar refusing extension of time under section 14 of the Law of the Limitation Act falls within the scope of decisions of the taxing officer subject to reference under Orders 7 (1) and 2 of the Advocate Remuneration Order.

The follow-up questions would be whether, **one**, the decision at issue emanated from a taxing proceeding and, **two**, whether the same was made by a "taxing officer" whose decision will be subject to reference under Orders 7(1) and 2 of the Advocate Remuneration Order. Under Rule 3 of the order the same provides;

***"Taxation proceedings"** shall mean an application for taxation of a bill of costs or an application to enforce, set aside, or determine any question as to validity or effect.*

What can be discerned from this rule is that there must be an order or award of costs whose taxation, enforcement or other questions or its validity will confer jurisdiction to the Registrar or Deputy Registrar in case of the high court to compose himself as a taxing officer. The emphasis here is that when the proceeding is handled by the Registrar or Deputy registrar, he does preside over the same as a "**taxing officer**", as defined under rule 3 of the Advocate Remuneration Order.

The applicant noted that the Advocate Remuneration Order does not provide an extension of time to file a bill of cost and thus resorted to applying section 14 (1) (2) of the Law of Limitation Act.

This section reads;

*(1) 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.*

*(2) For the purposes of this section "**the court**" means the **court having** jurisdiction to entertain the appeal or, as the case may be the application.*

It is clear that the decision to extend time, as it happened in the impugned decision, was the decision of the "**court**" and not the decision of a "**taxing officer**." The correctness or otherwise of the ruling is not the subject at this stage. Suffices to say that not all decisions rendered by the Registrar will necessarily mean decisions of the "**taxing officer**".

I have also considered the decision in ***Fransisca Kokuganywa Alfred(supra)***; admittedly, it emanates from execution proceedings.



However, the reasoning in that decision is relevant here, underscoring one crucial point that the decision made by the Deputy Registrar of the High Court is deemed to be the decision of the High Court. It can not be dealt with by way of reference in this court.

This position was also discussed by my brother Kisanya J in the case of **Naulid Mohamed Chingo v Salum Said Mfiwe & Another, Civil Reference No. 6 of 2022 HC at Dar es Salaam citing Mruma J in Sogea Satom Company vs Barclays Bank Tanzania and Two Others, Misc. Civil Reference No. 15 of 2021 (Unreported)** thus;

*"Except where the law clearly states otherwise, a decisions or order rendered by the Deputy Registrar of the High Court is a decision of High Court and may be challenged by way of an appeal, reference and revision to the Court of Appeal by way of review to the same High Court.*

Based on the foregoing, I am persuaded by the respondent's submission that the impugned decision of the Deputy Registrar, from which this reference emanates, is not that of the taxing officer that can be subjected to reference under Order 7 (1) and 2 of the Advocate Remuneration Order. In other words, the decision of the Deputy Registrar in the application to extend the time to file a bill of cost is a decision of this

court. It cannot be challenged by way of reference to the same court, that is, the High Court. I find merit in the preliminary objection raised by the respondent. The respondent prayed that the application should be dismissed or struck out. Having ruled that the application is incompetent, it is equally incompetent to be dismissed, the same is struck out with costs.



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**A. J. KIREKIANO**

**JUDGE**

**19.06.2024**

**COURT:**

Ruling delivered chamber in the presence of Miss Fauzia Kajoki, advocate for the applicant, and in presence of the respondent.



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**A.J. KIREKIANO**

**JUDGE**

**19/06/2024.**