

**IN THE HIGH COURT OF TANZANIA  
MUSOMA SUB - REGISTRY  
AT MUSOMA  
CIVIL REFERENCE NO. 09 OF 2023**

*(Arising from Bill of Costs No. 9 of 2022, Originating from Civil Appeal No. 17 of 2020 of  
the High Court of Tanzania – Musoma Sub Registry)*

**FELICIAN MUHERE MGOYO ..... APPLICANT**

***VERSUS***

**DAVID JOSEPH MLAY ..... RESPONDENT**

**RULING**

22<sup>nd</sup> February & 11<sup>th</sup> March, 2024

**M. L. KOMBA, J;**

The applicant above mentioned, requesting this court to examine the ruling of the Taxing Master (Hon. F. L. Moshi) in Bill of Costs No. 9 of 2022 which was delivered on 16<sup>th</sup> February, 2023 for the purpose of satisfying itself as to the correctness, legality or propriety of the said ruling. Applicant's chamber summon is accompanied by affidavit deponed by himself. Upon being served with chamber summons, as tradition, counsel for respondent filed filling counter affidavit, therein raised a Preliminary Objection (PO) on point of law which pray to be heard on the date scheduled for hearing of Application that;

1. *That the application is hopelessly time barred.*

When the matter was scheduled for hearing, both parties agreed to submit on PO and main application and this court has to determine which among the two shall put to an end the matter. Applicant stood solo, fended for himself while the respondent was represented by Mr. Baraka Makowe, an advocate. Being valid PO, this court allowed counsel for the respondent to submit over the preliminary objection.

Mr. Makowe submitted that the application is out of time as per court order in Civil Reference No. 08 of 2023 where applicant had 14 days from the date of the order which was 4<sup>th</sup> October, 2023. Though it is not indicated when the ruling was obtained, counsel submitted that affidavit which supports application was deponed on 11<sup>th</sup> October 2023 but payment of the said application was made on 25<sup>th</sup> October 2023, from practice, he said, the date of payment of court fee is determined to be the filing date and therefore the application was filed on 25<sup>th</sup> October, 2023 which is 21 days has passed since the court order was issued. He lamented that because applicant had specific time to file, he has to indicate every detail in his affidavit. Under section 3 of the Law of Limitation he prays the application to be dismissed with costs.

Resisting the PO, applicant who represented himself submitted that he filed the application on 11/10/2023 and it was stamped on the same date, he paid for it and was given summons to serve the respondent on the same date which was 11/10/2023. He prayed the PO to be overruled with costs.

The issue of time limitation is very important as it confers court jurisdiction to entertain the matter. In Civil Reference No. 8 of 2023 this court ordered the applicant to file application within 14 days after striking out the application bearing defective affidavit. That was 04/10/2023. Record of this application show application was presented at the High Court registry on 11/10/2023 and it was received by the registry officer. Counting from 04/10/2023 to 11/10/2023 it is only 6 days lapsed. Without stretching much, I find the application was filed on time and the PO is overruled.

As agreed by parties both submitted on the main application. This time it was the applicant who started to make his case. He submitted that in counter affidavit the respondent demand explanation on 3<sup>rd</sup> paragraph of affidavit which supports this application. His explanation goes like this, the bill of costs was prepared contrary to requirement of the law. He said during trial he objected the same under Regulation 55 (c) (d) and 64 (1) of Advocates remuneration Order, GN No. 264 of 2015 (the order) but objection was not

entertained. He informed this court he still object what happened before the registrar as the law was not adhered, he prayed this court to struck out the application so that respondent can file proper bill of costs or else it should be dismissed and each party to bare its own costs.

Mr. Makowe who represented the respondent responded that the complaint by the applicant is on particulars of the service charged for and professional services which all must be in columns. Explaining about Regulation 64(1) he said is about exchange of advocates and the last advocate has to prepare a single bill. To him these are minor things and pray this court not to treat regulation as penal enactment because it just provides procedures which cannot remove the primary right of his party to the suit.

Referring a book; Interpretation of statute and Legislation by MP Tandon, 5<sup>th</sup> ed. Counsel said it is a sound rule of interpretation that document has to be interpreted or construed in a manner to render enforcement of substantive right effective. He complaining why respondent should not be given his right as the end of procedure is to facilitate justice not to defeat. He prayed this court to dismiss the application and applicant to be ordered to pay costs as directed by Registrar and the entire application to be dismissed with costs.

During rejoinder applicant who had no representation he submitted that he did not pray this court to dismiss the application neither object on costs but he prays the applicant to correct errors as directed by this court (Hon. Mahimbali, J) in Misc Civil Reference No. 05 of 2021 before struck out. To his surprise the application filed the same thing that's why he prayed it be struck out with costs and applicant to file a fresh bill of costs.

Am invited to determine the correctness, legality and propriety of the ruling on Bill of Costs No. 09 of 2022 where the applicant is complaining on non-adherence of regulation 55(c) and 64(1) of the Order. the complained regulations are worded as follows;

*55.-(1) Bills of costs shall show the case and title of the name concerned and shall be prepared in five columns, as follows-*

*(a) the first or left hand column for dates showing year, month and days;*

*(b) the second for the number of items;*

*(c) **the third for the particulars of the service charged for;***

*(d) **the fourth for the professional charges; and***

*(e) the fifth for the taxing officer's deduction.*

*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 of the matter in respect of which costs have been awarded.*

Mr. Makowe did not deny the allegation of non-adherence of the stipulated order. He based his argument on the need of justice to applicant and the cited regulation should not be interpreted as penal regulation rather a procedure. In essence counsel admit what was presented by applicant is the position of the law, but he only focuses on end result and not the procedure. Law as a profession has specific codes for procedures. These codes were enacted to prove how noble the profession is. If the procedures were not important there could be none legislated. Likewise in the format, adjudicators would be overburdened if every litigant draw pleading the way he/she wish. My brother F. Mahimbali J, in **DAVID JOSEPH MLAY vs FELICIAN MUHERE MGOYO**, Misc Civil Reference No. 05 of 2021 when faced with a kin situation he said;

*'It is my insistence as well, that legal drafting/pleadings be reserved for the qualified advocates. In this way there will **be assurance of the quality of legal pleadings in court** thus leading to speed trials.....there must be discipline in every profession.'*

The order directs the advocate finally on the record shall draw a single bill. That mean, if there are more advocates, the last must draw bill. Otherwise,

the advocate who attend the client should draw bill of costs following directives in order 55 (1). I have read judgment in Civil Appeal No. 17 of 2020 and confirm that respondent herein was represented by Advocate Makowe but Bill of Cost No. 09 of 2022 arising from Civil Appeal No. 17 of 2020 was drawn, filled and prosecuted by Advocate Helena Mabula. When resisting objection registered by applicant herein, Ms. Mabula said she is coming from the same law chamber with Baraka Makowe and therefore she did not contravene any provision of law. The taxing master had the same position.


I am of different position on the sense that the cited regulation explains it is the advocate in record who shall draw bill, it does not indicate the chamber of advocate should draw a bill. I find its healthy to stick to rules and procedures than leaving any one to do the way they wish while perusing for their rights. So far as the applicant was ordered to file a proper application as per law, he was supposed to do so. Am saying so because this court is **incumbent to ensure that the law is complied with. See Adelina Koku Anifa & Another vs Byarugaba Alex** (Civil Appeal 46 of 2019) [2019] TZCA 416 (4 December 2019).

All being said, I find the Bill of Costs No. 09 of 2022 did not comply to the requirement of the law (regulation) to the extent as analysed. It should not be left in court record for that irregularity. I hereby struck out ruling delivered by taxing master on 16 February, 2023 in Bill of Costs No. 09 of 2023 and the applicant shall file a fresh bill of cost as per law within 14 days from this ruling.

Costs of this application is awarded to the applicant herein.

**DATED** at **TARIME** this 11<sup>th</sup> day of March, 2024.



  
**M. L. KOMBA**  
**Judge**