

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 41 OF 2003

NOMAN-MAHBOUB (T/A NOMAN AL MAHBOUB
GENERAL TRADING CORPORATION.....PLAINTIFF
VERSUS
MILCAFE LIMITED.....DEFENDANT

R U L I N G

Kimaro, J.

A bill of costs was filed for taxation before the Taxing Master. In the taxation proceedings an issue related to the jurisdiction of the High Court to entertain taxation after notice of Appeal to the Court of Appeal was issued arose. The Taxing Master felt that he did have the capacity as a Taxing Master to entertain the issue: He has now made reference to me under Section 77 of the Civil Procedure Code 1966.

Mr. Thadayo, Learned Advocate who appeared for the judgment debtor argued that the jurisdiction of the High Court ceases after a notice of appeal to the Court of Appeal is issued. Authorities to support the argument were also supplied to the Court.

In principal Mr. Maira, Learned Advocate for the Decree Holder did not have any objection. He only wanted to have authorities, which Mr. Thadayo supplied.

In the case of **MATSUSHITA ELECTRIC CO (E.A) LTD VS CHARLES GEORGE t/a as G.G. TRADERS** Civil appeal No.71 of 2001 (CAT) (Unreported) Justice Ramadhan held that:

“ I am of the considered opinion that once a notice of appeal is filed under Rule 76, then this court is seized of the matter in exclusion of the High Court except for application specifically provided for such as leave to appeal, provision for a certificate of point of law or execution where there is no order of stay from this court.”

The above decision is clear. Once a notice of appeal has been issued, the jurisdiction of the High Court ceases except for matters specifically provided for. This is what the Taxing Master felt that he had no capacity as a Taxing Master to pronounce so.

The Taxation proceedings, as the title shows, are before the High Court. Since a notice of appeal has been issued, the jurisdiction of the High Court has ceased. Taxation is not a matter which has been specifically allowed to proceed even

after issuance of a notice of appeal to the Court of Appeal. Moreover the notice of appeal given shows that the respondent was aggrieved by the same decision for which taxation is sought, and wants to impugn it in the Court of Appeal. It is improper to proceed with taxation under the circumstances.

I thus uphold the objection and order stay of taxation until the intended appeal is finalised or any event happens which will allow the taxation proceedings to revive.

N.P.KIMARO,
JUDGE
29/10/2004

Date: 4.11.2004

Coram: Hon. N.P.Kimaro, J.

For the Applicant – Mr. Maira.

For the Respondent – Mr. Thadayo.

CC: R. Mtey.

Court: Ruling delivered today.

Order: Taxation is stayed as per the ruling.

N.P.KIMARO,
JUDGE
4/11/2004

874 –words
jd.

I Certify that this is a true and correct
of the original/order Judgement Rulling
Sign _____
Registrar Commercial Court Dsm.
Date 09/11/04