

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

COMMERCIAL CASE NO. 59 OF 2003

BETWEEN

NATIONAL BANK OF COMMERCE LIMITED.....PLAINTIFF

VERSUS

DESIREE & YVONNE TANZANIA LIMITED AND OTHERS.....DEFENDANTS

RULING

J.R. Kahyoza Taxing Master

This is a ruling in the respect of the bill of cost filed by Ally El-Maamry Esq advocates for and on behalf of the successful defendants. The Bill of cost contained 24 items under Part I and five items under disbursement. An amount of Tshs. 20,204,000/= was claimed in total.

The bill of cost was argued by my written submission. The judgment debtor was represented by IMMA advocates. IMMA advocates raised a preliminary objection in the reply to the decreeholder's submission that this court has no jurisdiction to tax the bill of cost filed out of the time. It was submitted that the judgment in Commercial case no. 59 of 2003 of which was the bases of this taxation proceedings was delivered on 13th March, 2006 in which the 2nd and 3rd Defendants, the decreeholders herein, were awarded costs.

It was further averred that the bill of cost was filed on the 11th December, 2006 approximately two hundred and seventy six (276) days after the date the judgment was delivered. A number of unreported decisions were cited to support the contention that the bill of cost was filed out of time. He cited the case of **Union of Tanzania Local Oil Companies Versus Tanzania Association of Oil Marketing Companies Limited and SGS Tanzania Super intendment Company Limited; Com Case No. 95 of 2005**, and the case of **Abdallah Kipingu Versus Said Dulazi; Civil Appeal no. 15 of 2006 H.C(T) Tanga District Registry (unreported)**.

In his rejoinder the decreeholders advocate conceded to the fact that the bill of cost was filed out of time and prayed to this court to extend time of limitation so that taxation can proceed.

I will quote the learned advocates submission for sake of clarity:-

"Having said that I wish to state that I pray to the Court to expand the time of limitation so that taxation can proceed. The fault here is merely technical. The courts are expected to hand out substantial justice. We should not be slaves of technicalities as these are there to help justice and not to hinder it".

It is now settled that bill of costs has to be lodged within 60 days. It was so decided in the case of **Union of Tanzania Local Oil Companies** Supra . Hon Mjasiri, J as he then was dismissed a bill of costs for being filed out of the time and held as follows, I quote:-

“Having said that it is my finding that the limitation period is sixty days (60) as provided under Section 21 of Part III of the schedule to the Limitation Act”.

The Bill of cost was filed after the expiry of 60 days without a leave to do so was filed out of time, and this court has no jurisdiction to tax such a bill of costs.

It was prayed by the decreeholder’s advocate that this court expand the time of limitation so that taxation can proceed. I am not inclined to succumb to that submission. The law is very clear the decreeholde’s advocate has to abide by the procedural law, file his application under the relevant law and give reasons in support of his application. So the prayer to expand time is denied and the advocate is directed to comply with the procedure law if he wishes.

The objection is upheld and the bill of cost is dismissed for the reason that it was filed out of time with costs.

It is so ordered.



J.R. Kahyoza

RCC

08/05/2008

Date: 8/5/2008

Coram: K.T. Revocati – DRCC

For the Plaintiff/ Decree holder: Absent

For the Defendant/ Judgment Debtor: Ms. Karume

CC. Mrs. Joyce Grison

Court:

Ruling delivered this 8th day of May, 2008 in the presence of Ms. Karume for the Judgment Debtor and in the absence of the Decree Holder.



K.T. Revocati

Taxing Master – RCC

8/5/2008

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