

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

**MISCELLANEOUS COMMERCIAL CAUSE NO. 173 OF 2015**  
**(Arising from Commercial Case No. 103 of 2014)**

**ARISTEPRO INVESTMENT CO. LIMITED ..... APPLICANT**  
**VERSUS**  
**JAWINGA COMPANY LTD ..... RESPONDENT**

30<sup>th</sup> September & 26<sup>th</sup> November, 2015

**RULING**

**MWAMBEGELE, J.:**

Aristepro Investment Company Limited, the applicant, has proffered in this court an application for reference seeking to challenge the decision of the Taxing Officer in Commercial Case No. 173 of 2015 pronounced on 05.06.2015. The application has been made under rule 5 (1) and (2) of the Advocates' Remuneration and Taxation of Costs Rules, 1991 – GN No. 515 of 1991. It is supported by an affidavit of Wilson Edward Ogunde, an advocate of this court and courts subordinate thereto except for the Primary Court. As can be gleaned from the Chamber Summons, the applicant is seeking for the following orders: <sup>4<sup>th</sup></sup>

1. That the Honourable court be pleased to quash and set aside the ruling on taxation by the Taxing Master (Hon. Herbert, DR) delivered on the 23<sup>rd</sup> June, 2015 for lack of jurisdiction and/or sufficient reasons;

2. Costs of this application be provided for, and
3. Any other order(s) and/or relief(s) this Honourable court may deem fit and just to grant.

The parties had agreed to dispose of this reference by way of written submissions which agreement the court blessed and proceeded to schedule the submissions dates. The parties have complied with the submissions schedule. The applicant's written submissions have been filed by a Law Firm going by the name of Brotherhood Attorneys while those of the respondent have been filed by MMM Attorneys, also a Law Firm.

The main ground of complaint by the applicant is that the Taxing Officer heard the taxation proceedings without the requisite jurisdiction. That alarm, as can be seen in the affidavit in support of the application and the written submissions by the applicant, was raised during the taxation proceedings before the Taxing Officer by way of a preliminary objection but was not decided upon because the preliminary objection was dismissed for want of prosecution.

It is the applicant's submission that the Taxing Officer had no jurisdiction to deal with the matter as the same was filed hopelessly out of time. Taxation of Costs documents were filed on 16.10.2014 while the judgment and decree thereof were handed down on 16.04.2014. It is submitted further that taxation proceedings must be filed within 60 days. The provisions of item 21 of Part III of the First Schedule to the Law of Limitation Act, Cap. 89 of the Revised Edition, 2002 (henceforth "the Limitation Act") and an unreported decision of the Court of Appeal of ***M/S Sopa Management Limited Vs M/S Tanzania Revenue Authority***, Civil Appeal No. 25 of 2010 are cited to buttress this proposition. In the premises, it is submitted, the taxation proceedings should have been

dismissed as required by the provisions of section 3 (1) of the Limitation Act and **Desai's Limitation Act**, 1990 (6<sup>th</sup> Edition), the University Book Agency, Allahabad.

The applicant's counsel has also canvassed the point that the question of jurisdiction is of utmost importance as it goes to the root of the authority to adjudicate upon the case. The cases of **Tanzania Revenue Authority Vs KOTRA Company Limited**, Civil Appeal No. 12 of 2009, **Fanuel Mantira Ng'unda Vs Herman Mantiri Ng'unda & 20 others**, Civil Application No. 3 of 2004 and **Richard Jullus Rukambura Vs Issack Ntwa Mwakajila & another**, Civil Appeal No. 3 of 2004, all unreported decisions of the Court of Appeal, have been cited to bolster up this point.

Having submitted on the points above, the counsel for applicants also challenged the ruling itself submitting that the taxed amount of Tshs. 10,397,700/= was erroneously reached and that costs such as transport costs from Msewe to Commercial Court and return and communication services for 30 months were granted without sufficient reasons advanced by the Taxing Officer.

In respect of transport costs; items 16 -19, 22, 25, 30 – 31, 36 – 45 and 48 – 54 were taxed as presented despite the applicant's complaint to the effect that the respondent ought to have used public transport instead of a taxi. There was an allegation that the respondent used his personal vehicle but there was no explanation given why he opted to use a taxi instead of the personal vehicle.

The Taxing Officer also taxed as presented costs for communication services for 30 months at a tune of Tshs. 600,000/= without proof of receipts, vouchers, documents, drafts or copies for all disbursements charged in a bill of costs. This

was contrary to rule 55 (1) of the Advocates' Remuneration and Taxation of Costs Rules, 1991 – GN No. 515 of 1991, it is submitted.

On the other hand, the respondent states in the main that the Taxation of Bill of Costs was presented in time because a copy of the decree was issued on 26.08.2014 and it was filed on 16.10.2014.

As to the second issue on the challenge of the amount taxed, the respondent submits that items 16 -19, 22, 25, 30 – 31, 36 – 45 and 48 – 54 were taxed as presented because of their reasonability. It is submitted that the fact that the respondent's witness had a personal vehicle which he used to attend the court, regardless of the status of the said vehicle, was enough to tell the court of the status of the witness to warrant him use a taxi.

On the requirements of rule 55 (1) of the Advocates' Remuneration and Taxation of Costs Rules, 1991 – GN No. 515 of 1991, the respondent submits that that requirement is not absolute. It is argued, the Taxing Officer is endowed with discretionary powers to decide on charges and expenses incurred by the witness called to give evidence basing on its reasonableness. To buttress this stance, the provisions of rule 11 the Advocates' Remuneration and Taxation of Costs Rules, 1991 – GN No. 515 of 1991 are cited.

I have gone through the learned written submissions by the parties' advocates. The first issue posed by both parties in their written submissions hinges on jurisdiction of the court to entertain and hear the taxation proceedings the subject of this reference. As prudence would have it, I find it apposite to start with this.

As rightly put by the counsel for the applicant and conceded by the counsel for the respondent, the time limit within which a Bill of Costs must be filed is 60 days as dictated by item 21 of Part III of the First Schedule to the Law of Limitation. That this is the law was stated in the **Sopa** case (supra); a case cited and appended with the applicant's written submissions. The Court of Appeal held:

"While it is true that the bill of costs is linked to a decree to the extent that the decree holder would be entitled to costs of the suit if there is no order for withdrawing costs, a bill of costs is instituted separately as an application to determine costs of litigation on the part of the successful party. Because the Law of Limitation Act, 1971 does not provide for a period of limitation for lodging a bill of costs, such application would in law fall under item 21 to the First Schedule Part III of the Law of Limitation Act. 1971."

Thus the **Sopa** case (supra) is an authority for the position that a Bill of Costs is an application the limitation of which is falling within the ambit of item 21 of Part III of the First Schedule to the Law of Limitation Act and thus must be lodged within 60 days.

Luckily, the foregoing position of the law does not seem to be at issue between the parties in the present instance. What seems to be at issue is the question when should the 60 days be reckoned. While the applicant submits that they are reckoned from the day the judgment or ruling and decree were pronounced, the

respondent argues that they are reckoned from the day the documents are supplied to the decree holder.

I must admit that this issue has taxed my mind greatly. In the *Sopa* case (supra) it was not stated vividly as to when the sixty days within which taxation proceedings should be initiated should be reckoned. This was perhaps so because it was not at issue between the parties to that case. What was at issue was whether the taxation proceedings fell within the purview of item 20 of Part III of the First Schedule to the Law of Limitation Act or item 21 of Part III of the First Schedule to the same Act. But reading the *Sopa* case in context, it would appear the Court of Appeal was of the settled mind the sixty days should be reckoned from the date of judgment and decree the subject of taxation proceedings were pronounced. This is deciphered from the 3½ years mentioned in that judgment which were counted from the date of judgment and decree the subject of that taxation proceedings.

In tackling this matter, let me start with the premise that Bills of Costs are instituted pursuant to the Advocates Act, Cap. 341 of the Revised Edition, 2002 read together with the Advocates' Remuneration and Taxation of Costs Rules, 1991 – GN No. 515 of 1991. In all the enabling provisions, it is not provided anywhere that the decree holder should accompany judgment and/or with the Bill of Costs. If those documents were a condition precedent for filing a Bill of Costs, the law would have prescribed so in clear terms. And to clinch it all, it has been the practice in this jurisdiction that Bill of Costs filed without attaching the same with the judgment and/or decree. That is perhaps the reason why, as the applicant points out in the rejoinder submissions, the respondent did not append the Bill of Costs with the judgment and/or decree; the documents he waited for

four months in order to file the Bill but at the end of the day did not append them with the Bill of Costs he eventually filed.

The judgment and/or decree are not documents mandatorily required to be appended with the Bill of Costs at the time of filing. This is perhaps because the Bill of Costs is filed in the same court which passed the judgment and decree and dealt with in the same file. In the circumstances, to require that the judgment and/or decree must be appended with the Bill of Costs would unnecessarily be delaying the decree holder to reap the fruits of litigation.

To recap, I wish to state as follows. For the purpose of lodging a Bill of Costs in this court, attachment of a copy of judgment and/or decree is not a legal requirement. Thus, in computing the time of limitation to file a Bill of Costs, no time is excluded. Time starts to run against the decree holder right from the date the judgment the subject of the taxation proceedings is pronounced.

It is evident therefore that the respondent in the present case wasted his precious time – about four months - waiting for a copy of judgment and decree so as to file his Bill. He could have filed the Bill, like he did, without a copy of judgment and it could be, and was actually, fine before the eyes of the law. Time started to tick against the respondent on 06.04.2014 when the judgment the subject of taxation was pronounced.

In fine, in view of the fact that the judgment and/or decree are not documents which must be appended with the Bill of Costs, the respondent wasted his precious time to wait for them and that course was to his detriment. In fact when the respondent lodged the Bill on 16.10.2014, he was out of time by four months as the timeframe within which the Bill of Costs should have been filed

had long expired since 16.06.2014. The court is not properly moved if an application, like the one before the Taxing Officer; the subject of this reference, is filed out of the prescribed time. The taxation proceedings were therefore incompetently before the Taxation Officer; he ought not to have entertained it.

This ground only disposes of this application. I do not find it necessary to canvass the other grounds of complaint as that process will be but an academic exercise, the exercise that may be done at another opportune moment.

In the end of it all, and for the foregoing reasons, I find this application to be meritorious. The order of the Taxation Officer is set aside. This application is therefore allowed with costs.

Order accordingly.

DATED at DAR ES SALAAM this 26<sup>th</sup> day of November, 2015.

**J. C. M. MWAMBEGELE**

**JUDGE**