

No. 110 of 2016. The reference is made under Order 7 (1) and 7 (2) of the Advocates Remuneration Order, GN 264 of 2015 (hereinafter referred to as "the Order") and Section 95 of the Civil Procedure Act, Cap. 33 (hereinafter referred to as "CPC").

The respondent having been served with summons, through the services of Mbuso Advocates and Company, filed a counter affidavit and notice of preliminary objection to oppose the application. The notice of preliminary objection was to the effect that the application contravenes Orders 7 (2) and 8 (1) and (2) of the Order.

The hearing of the preliminary point of objection was ex-parte following the non-appearance of the applicant despite he be aware of the last date for hearing but defaulted to enter appearance on two consecutive occasions. Counsel Chambuso briefly submitted that Order 7 (2) of the Order requires for reference to be filed within 21 days. He said the decision of the Taxing Officer was delivered on 24th April, 2017 but the present reference was filed on 16th June, 2017 whereas it was supposed to be filed by 14th May, 2017. It was his prayer that since the applicant did not seek leave to file the

reference out of time as required by Order 8 (2) of the Order then the reference should be dismissed with costs.

The objection raised by the respondent is whether the reference is filed within 21 days as required by Order 7 (2) of the Order. This Order provides:

"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."

The above Order requires for the reference to be filed within 21 days from the date of the decision. As correctly submitted by counsel Chambuso the date of the decision is 24th April, 2017. Counting from 24th April, 2017 twenty one days expired on 14th May, 2017. The applicant's reference was filed on 16th June, 2017 which is almost after the expiry of 53 days contrary to the provisions of Order 7 (2) of the Order. I understand that the applicant is pleading in the affidavit in support of the application that the decision was issued to it on 29th May, 2017. This averment imply that time should start to run from 29th May, 2017. With due respect to such a proposal, the Order as it

stands, it does not provide that in computing the 21 days then the time of obtaining the decision shall be excluded. If at all the applicant feels that the delay in securing or coming into knowledge of the decision would have entitled him to file the reference out of time then in terms of Order 8, the applicant was required to seek extension of time before filing the present reference. Since the reference was filed out of time then the same is hereby dismissed with costs. It is so ordered.

Dated at Dar es Salaam this 15th day of February, 2018.



B.M.A Sehel

JUDGE

15th day of February, 2018.

