

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 153 OF 2019

(Arising from Commercial Case No. 120 of 2005)

STANDARD CHARTERED BANK (T) LTD.....APPLICANT

Versus

NATIONAL OIL.....RESPONDENT

Last Order: 23rd May, 2020

Date of Ruling: 16th July, 2020

RULING

FIKIRINI, J.

This is an application for clarification of the ruling and order of this Court dated 1st August, 2019, regarding costs, filed under Rule 2 (2) of the High Court (Commercial Division) Procedure Rules, 2012, GN. No. 250 of 2012 (the Commercial Court Rules), Rule 4 of the Commercial Court Rules, read together with the provision of section 95 of the Civil Procedure Code, Cap. 33 R.E. 2002(the CPC).

Supporting the application was the affidavit of Mr. Musa Mbagha learned counsel, who under paragraph 6, 7, 8, 9 and 10 has highlighted the reasons for seeking the clarification. Ms. Subira Omary filed counter- affidavit and particularly in paragraph 4 contested the assertion by saying that the applicant was not and has

never been successful or been a winning party at any instance regarding the execution proceedings as erroneously claimed by the applicant.

The application was argued by filing written submissions in the following order: the applicant to file their written submission by or on 12th June, 2020; reply submission by or on 26th June, 2020 and rejoinder if any by or on 2nd July, 2020, with ruling set for 16th July, 2020. Mr. Sauli Santu learned counsel filed the written submission on behalf of the applicant while Ms. Dora Mallaba learned counsel made a reply submission on behalf of the respondent. The applicant prefaced the submission wondering two things: (i) whether it was proper seeking for clarification of Court's order, and (ii) whether it was proper for the applicant to do so. And relying on section 95 of the CPC and wording of Rules 2 (2) and 4 of the Commercial Court Rules, seeking of clarification of Court order can occur.

It was the applicant's submission that the Court can be moved to exercise its discretion and make clarification to its ruling and order. And in this application the applicant was inviting this Court to intervene as the only way this Court can clarify as to whom the costs was awarded. Supporting the submission an Indian case of **Light v Grimes, 43 A. 3d 808 – Conn: Appellate Court 2012**, was cited, in which the Court stated that the purpose of clarification was to take a prior statement, decision or order and make it easier to understand. Bringing this

application was thus proper based on the reasons advanced in paragraphs 3, 4 and 5 of the applicant's affidavit, submitted the counsel. And citing the case of **Godfrey Nzowa v Seleman Kova & Tanzania Building Agency, Civil Appeal No. 3 of 2013, p. 15**, it was the applicant's contention that as a general rule costs follow event. It can only be different if the awarding Court in its discretion finds good reasons for ordering otherwise.

Clarification sought to be made by this Court, according to the applicant will not prejudice the interests of the respondent but will remove doubts among the parties in this matter, whereby the Court in exercise of its discretion, was encouraged to ensure that the parties were not denied their right to adjudicate their claims and be awarded costs especially for a successful litigant. Expanding on the gist of awarding of costs the applicant referred this Court to the case of **Bahati Moshi Masabile t/a Ndono Filing Station v Camel Oi (T), Civil Appeal No. 216 of 2018**, High Court decision. Two reasons were advanced which were: *one*, the loser pay for costs upon losing the case, which weakened the loser financially, and *two*, awarding of costs puts the winning party back to her position prior to the suit.

Explaining on cost further, it was the applicant's submission, citing the case of **Dr. Maua Abeid Daftari v Fatma Salmin Said, Civil Appeal No. 108 of 2011, CAT, p.16**, in which the Court stated the following:

“Costs are in the discretion of the Court and the general principle in civil jurisprudence is that costs follow event. However, this is just a general principle and it may not always be the case.”

On the above premises, the applicant urged this Court to apply the reasoning in the above cited cases and apply them to the facts at hand, and in exercising its discretion grant the applicant’s application, by intervening for the end of justice.

Replying to the submission, the respondent submitted that, the ruling made on 1st August, 2019 was not a ruling to look for a successful litigant as submitted by the applicant, due to the fact that the applicant was not awarded any relief in the execution proceedings. Instead the Court ruled that simple interest should apply in a situation where the parties were seeking clarification from the Court on whether the calculations to be made should be based on simple interest or compound interest because the decree was silent on that point.

Countering the cited case of **Bahati Moshi Masabile** (supra), the respondent contended the case was not applicable, at this stage or in this matter as it was not a fresh matter. It was further submitted that, it was the Court which invited counsels to address it on the issues of the interest payable so that it can get clarity and make an informed decision on the aspect, since the decree was silent. The respondent

denied there existed an application upon which the Court was to make a decision on an application filed by the applicant which the Court could grant or dismiss the application with costs. Neither was the Court adjudicating on preliminary point of objection which it could uphold/sustain or overrule/dismissed with costs.

The respondent also submitted that in awarding simple interest instead of compound interest, which was within the Court's discretion, the Court did not change the status of the applicant from that of a default judgment debtor to that of an unpaid decree holder.

On the strength of her submission, it was the respondent's prayer that this Court should determine the application in favour of the respondent by specifically declaring that costs contested emanating from the ruling dated 1st August, 2019, should be made part and parcel of the costs to be awarded to the respondent in the course of the execution proceedings.

Seeking for clarification is one of the remedy available once there is confusion or order given by the Court has not been understood. In the case of **Sultan bin Ally Hilal El Esri v Mohamed Hila & Others, Miscellaneous Commercial Cause No. 64 of 2017**, the Court had this to say in underscoring right to seek for clarification by stating:

“.....in my well considered opinion, where there exists two conflicting orders of the court affecting the rights and duties of the parties to proceedings, in the absence of a clarification by the same court or a court of higher hierarchy, such litigant has no power to pick and choose as between to orders. Accordingly, in such circumstances, a respective party is enjoined to seek, via due process of law, a clarification and or direction from the court. This, obviously, will entail disclosure in utmost good faith of all circumstances and facts leading in the knowledge of the party pertaining to the order in question.”

Though the facts were slightly different but the principle is the same that a party can seek clarification on the Court order. This application is therefore properly before the Court. Both the cases of **Mohamed Hilal and Light v Grimes** (supra) have clearly enhanced the principle on right to seek clarification, which I fully subscribe to. And in actual fact it is more fitting rather than discretionary if there is an order which needs to be clarified, for such an application to be made and the Court to act accordingly.

Coming to issue of costs, these are awarded at the Court's discretion, usually following event unless otherwise decided, meaning the exercise is not automatic and costs are not awarded to the successful party as a matter of course. There is a long list of decisions in that respect including the two cases cited of **Godfrey Nzowa; Dr. Maua Abeid Daftari** (supra) and **DB Shapriya & Co. Ltd v Regional Manager Tanroads Lindi, Civil Reference No. 1 of 2018**, which cited with approval the case of **Tanzania Fish Processors Ltd v Eusto K. Ntagalinda, Civil Application No. 6 of 2013 (unreported)**.

Applying the principle to the application at hand, I am inclined to agree with the respondent's submission that, the ruling made on 1st August, 2019 was on issue of interest rate which has not been stated as the decree was silent on the point. The differing opinion on which interest rate should be applicable in computing the interest between the simple and compound interest, compelled this Court to ask parties to address the Court and hence the ruling subject of this application for clarification. Therefore, aside from the execution proceedings of which interest rate was to be used there was no any other application which was being decided, filed by the applicant, upon which the Court was invited to decide, either by granting or dismissing such application with costs.

The costs awarded in the ruling dated 1st August, 2019 were therefore, part and parcel of the costs awarded to the respondent in the course of the execution proceedings.

The application is thus dismissed as misconceived. For clarity purposes, the costs awarded after that ruling were with costs awarded to the respondent in course of the execution proceedings. It is so ordered.



A handwritten signature in black ink, appearing to read "P. S. FIKIRINI".

P. S. FIKIRINI

JUDGE

16th JULY, 2020