

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL REFERENCE NO. 3 OF 2019**

*(Originating from Taxation Cause No. 78 of 2019)*

**NATIONAL BANK OF COMMERCE LTD.....APPLICANT**

**Versus**

**SILAS LUCAS ISANGI.....1<sup>st</sup> RESPONDENT**

**FARM EQUIP (T) LTD.....2<sup>nd</sup> RESPONDENT**

**TANPERCH LTD.....3<sup>rd</sup> RESPONDENT**

**QUALITY GROUP LTD.....4<sup>th</sup> RESPONDENT**

**KANIZ MANJI.....5<sup>th</sup> RESPONDENT**

**YUSUF MANJI.....6<sup>th</sup> RESPONDENT**

Last Order: 24<sup>th</sup> Feb, 2020

Date of Ruling: 25<sup>th</sup> Mar, 2020

**RULING**

**FIKIRINI, J.**

This reference is made by way of chamber summons under Order 7 (1) & (2) of the Advocates Remuneration Order, 2015 GN. No. 263 (the Advocates Remuneration Order) published on July, 2015, Rule 2 (2) of the High Court (Commercial Division) Procedure Rules, GN. No. 250 (the Rules) published on 13<sup>th</sup> July, 2012

and section 95 of the Civil Procedure Code, Cap. 33 R.E. 2002 (the CPC). The applicant in this application is seeking for the following order:

(a) That the Honourable Court be pleased to set aside or quash the ruling of the Taxing Master in respect of Taxation Cause No. 78 of 2019 dated 16<sup>th</sup> October, 2019.

(b) The Honourable Court to be pleased to make any other or further orders as it is just and convenient in the circumstances of the case; and

(c) Costs be provided for.

The application is supported by the affidavit of Dickson Ikingura, the applicant's Principle Officer on one side, and it is opposed by the 1<sup>st</sup> respondent's counter affidavit on the other. With his counter affidavit the 1<sup>st</sup> respondent raised a preliminary point of objection that:

1. That, the application is incompetent for wrong citation of the provision of Law.

At the hearing Mr. Eric Kamala featuring for the defendant, had this to submit that the above cited provisions of the law were not applicable and thus can not move this Court to grant the reliefs sought. In support he referred the Court to the cases of **Chama cha Waalimu Tanzania v The AG, Civil Application No. 152 of 2008**

**(unreported) p.7 and Edward Bachwa v The AG & Another, Civil Application No. 128 of 2008 (unreported)** where in both cases the Court was of the decision that none citation or wrong citation rendered the application incompetent.

It was thus Mr. Kamala's submission that this Court has not been properly moved and urged it to dismiss the application with costs.

Mr. Nasson appeared for the applicant and had this to submit that the 1<sup>st</sup> respondent has failed to direct this Court as to which specific provision of the law ought to have been cited instead. All the provision cited were applicable citing Rule 7(10 & (2) of GN. No. 263 of 2015, Rule 2 (2) of the Rules and section 95 of the CPC, as proper considering the taxation originated from Court Broker's & Process Server (Appointment, Remuneration and Disciplinary) Rules, 2017 (the Court Broker's Rules). These rules did not provide for the remedy for an aggrieved party on decision by the taxing master. And this was what motivated the applicant to cite Rule 2 (2) of the Rules, section 95 of the CPC and Rule 7 (1) and (2) of the Advocates Remuneration Order, as it was the order which provided for remedy for any aggrieved party by the decision of the taxing master may file reference to the High Court Judge. That being the case, Mr. Nasson considered the application rightly filed and prayed for the preliminary point of objection be overruled with costs.

In order for the Court to grant the reliefs sought, the Court must have been properly moved. And that is done by correctly citing the provisions vesting the Court with the powers to grant or not to grant the relief sought. Whilst it is true that no precise provision has been cited which can properly move this Court, but even the preliminary point of objection raised was not able to cite the presumed correct provision which ought to have cited. I thus find myself in agreement with Mr. Nasson that there is no proper provision in place taking care of the situation. Since there is a *lacuna*, Mr. Nasson's resort to section 95 of the CPC via Rule 2 (2) of the Rules can, in my view not be faulted. In the case of **Aero Helicopter (T) Ltd v F.N. Jansen [1990] T. L. R. 142**, the Court entertained resort to section 95 of the CPC and exercise of inherent powers where there was no specific provision of the law providing for the relief sought. In the present application likewise, there was no specific provision of the law which can be relied on by an aggrieved party in light of the predicament the applicant was in. The applicant's resort to the provision of section 95 of the CPC cited sufficed to move the Court.

It is true Order 7 (1) & (2) of the Advocates Remuneration Act, had no bearing on the Court Brokers but at least was an avenue established for the Advocates to initiate reference. Naturally since the matter emanated from taxation, the closest provision possibly for the counsel to pick would have been from the Advocates

Remuneration Act. But since the provision did not provide for the remedy sought or there was no any other available provision, citing section 95 of the CPC was enough provision to move this Court.

In light of the above, I find the preliminary point of objection raised devoid of merits and proceed to overrule it. Costs to follow events. It is so ordered.



P. S. FIKRINI

JUDGE

25<sup>th</sup> MARCH, 2020