

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

LAND REFERENCE NO. 01 OF 2020

(From Reference No. 8 of 2017, Bill of Cost No. 10 of 2017, arising from Land Case No. 10 of 2015 in the High Court of Tanzania at Mbeya.)

FWANDA LIMITED.....APPLICANT

VERSUS

MARMO E. GRANITO MINES (T) LTD.....RESPONDENT

RULING

Date of Last Order: 01/07/2020
Date of Ruling : 06/08/2020

MONGELLA, J.

This application is filed under Rule 7 (1) of the Advocates Remuneration Order, 2015 G.N. No. 264 of 2015 and section 95 of the Civil Procedure Code, Cap 33 R.E. 2002. It is a result of the applicant's dissatisfaction with the decision of the Taxing Master in Bill of Costs No. 10 of 2017. The applicant's prayers as set out in the chamber summons are as follows:

- (i) *That this Honourable Court be pleased to peruse the ruling of the Taxing Master in the Bill of Costs No. 10 of 2017 and the submitted written submissions from both parties for better determination of just decision.*



- (ii) *That this Honourable Court be pleased to set aside the ruling of the Taxing master in the Bill of Costs No. 10 of 2017 pending determination of:*
- (a) *The legality of using improper documents in claiming costs by the decree holder.*
 - (b) *The legality of awarding costs by the Taxing Master based on presented improper documents*
 - (c) *The legal effect of such transactions in (a) and (b) above in this paragraph (sic)*
- (iii) *That the costs of this application be provided.*

Considering the above prayers, this Court prompted the parties to address it on the competence or rather tenability of the said prayers before this court before proceeding to the merits of the application. The applicant appeared in person while the respondent was represented by Mr. Timotheo Frowin Nichombe, learned advocate. Following the applicant's prayer, the parties addressed the court by written submissions.

In his written submissions, the applicant appears to have opted not to address the court on the issue prompted by the court suo motu. The respondent however, addressed the court on the issue. I shall thus deliberate on the issue by considering the respondent's submissions alone.

In his submission Mr. Nichombe argued that the application is incurably defective for being omnibus and for non-citation of enabling provision of the law. He argued that the application is omnibus because the applicant has asked for two distinct prayers supported by one affidavit.



He said that the law abhors omnibus applications, especially those which are in the nature that the first must precede the other and that they cannot be preferred simultaneously. He said that the application for reference made under Rule 7 (1) of the Advocates Remuneration Order is different from application to set aside the ruling of the Taxing Master and the two cannot be preferred at once under the same provision of the law. He cited the case of **Elikana Bwenda v. Sylvester Kuboko**, Misc. Civil Application No. 16 of 2019 (HC at Kigoma, unreported) in which it was ruled that an omnibus application renders the application incompetent.

Regarding non-citation of the enabling provision of the law, Mr. Nichombe argued that the court has to be properly moved for it to entertain an application. He contended that the prayer to set aside the ruling of the Taxing Master made under paragraph (ii) of the chamber summons has not been made under any law. He cited the case of **Marcky Mhango (on behalf of 684 others) v. Tanzania Shoe Co, Ltd and Another**, Civil Application No. 37 of 2003 (CAT at DSM, unreported) in which an application was rendered incompetent and struck out on account of non-citation of the enabling provision of the law.

I have considered the arguments by the respondent's counsel. To start with, I do not find the prayers being omnibus or brought under wrong provision of the law as argued by Mr. Nichombe. My concern however, is on the prayers made in the chambers summons whereby I find the same being totally clear and untenable. This is in fact what I ordered the parties to address the court on. Under paragraph (i) of the chamber summons, the applicant is seeking for this Court to peruse the ruling of the Taxing



Master and the written submissions from both parties for better determination of just decision. In this prayer the applicant is not communicating as to what exactly he wants the court to do regarding the ruling of the Taxing Master and the submissions of the parties. The prayer can therefore not be entertained by the court.

On the second prayer, the applicant is calling this Court to set aside the ruling of the Taxing Master pending determination of the legality of using improper documents in claiming costs by the decree holder; the legality of awarding costs by the Taxing Master based on presented improper documents; and the legal effect of such transactions in (a) and (b) above in this paragraph. I find these prayers totally unclear and confusing as the court cannot first set aside the ruling and then proceed to determine the issues raised. The court can therefore not proceed to entertain this application as the prayers raised are not tenable.

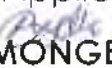
Given the observation I have made herein, I find the application untenable and thus incompetent. The same is thus struck out. Since the issue was raised by the court, I make no orders as to costs.

Dated at Mbeya on this 06th day of August 2020.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 06th day of August 2020 in the presence of the Applicant appearing in person.




L. M. MONGELLA
JUDGE