

**IN THE HIGH COURT OF THE
UNITED REPUBLIC TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO. 152 OF 2019

(Arising from District Land and Housing Tribunal for Kibaha in Misc. Application No. 26 of 2018)

ALPHONCE KISUKARI.....APPELLANT

VERSUS

PAULO SAMWEL.....RESPONDENT

Date of Last Order: 23.07.2020
Date of Ruling: 07.09.2020

RULING

V.L. MAKANI, J

The appellant ALPHONCE KISUKARI being dissatisfied with the decision of Kibaha District Land and Housing Tribunal (the **Tribunal**) in Misc. Application No.26 of 2018 on bill of costs, has filed an appeal before this court. Simultaneously, the respondent filed a preliminary objection on a point of law as follows:

"That the appeal is bad in law as it arises from the bill of costs."

With leave of the court the preliminary objection was argued by way of written submissions.

The respondent's submissions were drawn and filed by Mr. Emmanuel George, Advocate while that of the appellant were drawn and filed by the appellant himself.

Submitting on the raised point of objection, Mr. Emmanuel said that this appeal arises from the decision of the Tribunal in application for bill of costs No. 26 of 2018 which was decided in favour of the respondent herein. He said applications for bill of costs are governed by the Advocate Remuneration Order, GN No. 263 of 2015; and any party aggrieved by the decision of the Taxing Master has to file a reference to the High Court under Order 7(1) of the Advocate Remuneration Order. He said it was improper for the appellant to prefer an appeal. He supported his argument with the case of **Maximilian Rwabulala vs. Emilian Kalugala & Another [1987] TLR 4** and insisted that this appeal is misconceived and should be struck out with costs.

In reply, the appellant said that, the appeal is good and has been filed within the prescribed time and also has followed legal process in counting days before expiration of the prescribed days within which to file an appeal. He said the respondent has missed a point on the preliminary objection that he has raised. He further prayed for the dismissal of the preliminary objection with costs.

No rejoinder was filed.

Going through the submissions by the parties, the point for determination is whether this appeal is properly before this court.

As stated hereinabove, the Advocates Remuneration Order, 2015 governs proceedings regarding bill of costs. Order 7 of the said Advocates Remuneration Order, 2015 states:

(1) Any party aggrieved by a decision of the Taxing officer, may file reference to a judge of the High Court.

(2) A reference under order (1), shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days of from the date of the decision.

It is not in dispute that this appeal is against the decision of the Tribunal in an application for bill of costs which was decided in favour of the respondent. It is also not in dispute that the appellant being aggrieved by the decision of the Taxing Master has preferred an appeal by way of a Memorandum of Appeal.

In view of the above therefore, I am in agreement with Mr. Emmanuel that since the bill of costs is governed by the Advocate Remuneration Order, 2015, the appellant's appeal before this court is misconceived. The appellant ought to have filed an application for reference under Order 7 of the Advocate Remuneration Order, 2015 and the said application must have been by way of a Chamber Summons supported by an affidavit as per Order 7(2) of the Advocate Remuneration Order, 2015.

Instead of replying to what was raised by Mr. Emmanuel, the appellant evasively submitted on the time limitation, that is, this

appeal has been filed within time. But the legal position remains the same that the appeal is not properly before the court.

In the end result, the appeal is struck out with costs for being incompetent.

It is so ordered.

V.L. Makani
V.L. MAKANI
JUDGE
07/09/2020

