

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

REFERENCE NO. 02 OF 2021

*(Arising from the Ruling of Bill of Cost No. 29 of 2020 Hon. Tengwa , Taxing Master
and Originated from Land Appeal No.39 of 2015 Hon. S.S Mwangesi, J)*

DEODATA ELIAS APPLICANT

VERSUS

ROBERT JOSEPH 1ST RESPONDENT

BIANCE JOSEPH 2ND RESPONDENT

NATALIS TIMONTHY.....3RD RESPONDENT

MARGRETH SAMSON.....4TH RESPONDENT

JOSE KIBERITI 5TH RESPONDENT

AUGUSTINO MGACHI 6TH RESPONDENT

YOLANDA LIYULA..... 7TH RESPONDENT

MARIACIA LIYULA..... 8TH RESPONDENT

LEONARD JOSEPH..... 9TH RESPONDENT

SILVIA JOSEPH..... 10TH RESPONDENT

CHRISTIAN..... 11TH RESPONDENT

RULING

Last Order: 17.09.2021

Date of Ruling: 23.09.2021

A.Z.MGEYEKWA, J

This is a reference to this Court from a ruling of a taxing officer, Mr. C.M Tengwa , in a taxation matter which was before him The application

is made under Order 7 (1) and 8 (1) of the Advocates Remuneration Order GN.264 of 2015. The applicant prays this court to grant leave and extend time to the applicant to determine the application out of time. The applicant also prays for this court to reverse the ruling of the Taxing Master in Bill of Cost No. 29 of 2020 delivered on 8th September, 2020 by Tengwa and allow the application to be determined on merit.

To support his application, the applicant filed an affidavit deponed by Deodata Elias, the applicant. The application has encountered formidable opposition from the respondents and has demonstrated their resistance by filing a joint counter-affidavit, deponed by Ms. Bianca Joseph, 2nd respondent on behalf of the rest of the respondents.

When the matter was called for hearing on 26th August, 2021, the appellant and the respondents appeared in person, unrepresented. The applicant prayed to argue his application by way of written submission. By the consent of the parties and the court order, the appellant filed his submission in chief on 3rd September, 2021 and the respondents filed his reply on 10th September, 2021 and the appellant's Advocate filed a rejoinder on 17th September, 2021.

The appellant was the first one to kick the ball rolling. Reiterating what was deposed in the supporting affidavit, the respondent urged this court

to adopt the applicant's application and form part of his submission. The applicant asserted that in Land Appeal No. 39 of 2015 the respondents were the appellant and the appeal was dismissed by Hon. S.S Mwangesi, J (as he then was) and the respondents were condemned to pay costs of the appeal. She submitted that Hon. Simfukwe, Deputy Registrar extended the applicant time to file a Bill of costs on 3rd April, 2021. She went on to argue that Taxing Master dismissed the application for without reading the order dated 12th March, 2020 issued by Hon. Simfukwe which granted 21 days extension days to the applicant.

The appellant went on to submit that this court on 8th February, 2021 permitted her to withdraw the Reference No. 19 of 2020 with leave to refile. She urged this court to revise the Order of Hon. Tengwa, Deputy Registrar and allow the parties to be heard.

The respondents strongly opposed the applicant's assentation that Hon. Tengwa, Deputy Registrar mistakenly failed to read Hon. Simfukwe, Deputy Registrar Order dated 12th March, 2020 of which Hon. Simfukwe ordered the applicant to file a reference within 21 days. They valiantly contended that the applicant has failed to demonstrate reasonable course as to why she has not filed a Bill of Costs within time since Hon. Kisongo, Deputy Registrar in Land Application No. 20 of 2018, the matter involving the same parties granted her 14 days to file the said Reference. To

support their submission they referred this court to paragraphs 6, 7, 8, and 9 of the counter affidavit.

The respondents went on to submit that the applicant has abused the court process by instituting a new application with the intention to legitimize her time-barred application for Bill of Costs before Hon. Simfukwe, Deputy Registrar, and Hon. Tengwa, Deputy Registrar. They went on to state that it is trite law that the court entertains the vigilantes. It was their view that the applicant has never been vigilant, prompt, or diligent in prosecuting his matter since she was granted 14 days. They valiantly argued that the applicant's attempts have been brought maliciously to mislead this court and prejudice the respondents.

The respondents did not end there they contended that Hon. Simfukwe granted 21 days was issued after noting that the applicant filed maliciously an application for Bill of costs while out of time arising from a decision in Application No. 98 of 2009 of the District Land and Housing Tribunal between the same parties instead of the actual decision which is Land Application No.39 of 2015, therefore the 21 days were granted to the applicant to rectify the said defect and refile again as the court lacks jurisdiction. They went on to argue that the said order does not substitute the original order of Hon. Kisongo, Deputy Registrar, it is for the same reason that Hon. Tengwa, Deputy Registrar dismissed the application for

being time. They referred this court to the case of **Mwita Sagamo Nyikana v Joyce Mang'era Kemanga**, Misc. Civil Application No. 05 of 2020. Insisting, they claimed that the applicant has slept with her rights. They contended that the multiple application prejudiced the respondents' time to engage in their economic issues since they have been constantly tied with same matter due to the applicant's negligence. To bolster their submission they cited the case of **Johnson Amir Garuma v AG and 2 Others**, Misc. Civil Application No.11 of 2017.

On the strength of the above submission, they urged this court to dismiss the applicant's Reference with costs.

In her brief rejoinder, the applicant reiterated her submission in chief. Stressing, the applicant claimed that Application No. 24 of 2020 was wrongly dismissed on 8th September, 2002 while there was an Order dated 12th March, 2002 by Hon.Simfukwe, Deputy Registrar which granted 21 days extension for the applicant to file a Bill of Costs by 3rd April, 2021 and she filed the said application on 1st April, 2021. She insisted that she is entitled to costs and thus she urged for this court to find that it is prudent to accord the applicant ultimate opportunity to pursue her rights, she added that in case the application for Bill of Costs is denied then her rights will be infringed. She added that however, the longevity of the legal

procedure maybe but the only main and paramount objective is to reach and achieve the ends of justice.

On the strength of the above submission, the applicant urged this court to find that her application has merit and the same be granted with costs.

I have dispassionately considered the submission of both parties and examined the affidavit, counter-affidavit, and the records and from the outset, I proceed to determine the issue ***whether the application is meritorious.***

I have keenly followed the application and the grounds deposed in the applicant's submission whereas the applicant has shown the path navigated by her and the backing she has encountered in trying to enforce the Bill of Costs and reverse the decision of Hon. Tengwa, Deputy Registrar. I have scrutinized the records and noted that the Taxation Case No. 20 of 2018 was before Hon. Kisongo, Deputy Registrar and he determined the application for extension of time to file a Bill of Cost out of time. The application was granted and the applicant was given 14 days to file a Bill of Costs. The ruling was delivered on 31st December, 2021. Thereafter, the applicant filed a Bill of Cost No.24 of 2020 and Hon. Simfukwe, Deputy Registrar discovered that the Bill of Cost was

concerning Application No.98 of 2009 of Kinondoni District Land and Housing Tribunal thus she struck out the application for lack of jurisdiction with leave to refile a Bill of Costs in respect of Land Appeal No. 39 of 2015 of the High Court of Tanzania.

Hon. Simfukwe granted 21 days to refile the Bill of Costs in respect to Land Appeal No. 39 of 2015 of the High Court of Tanzania. Thereafter, the applicant on 1st April, 2020 filed a Bill of Cost No. 29 of 2020 before Hon. Tengwa, Deputy Registrar. In his findings, Hon. Tengwa notice that the applicant was given 14 days to refile the Bill of Cost by Hon. Kisongo, Deputy Registrar, and counting the days he found that the applicant was out of time as the result he dismissed the Bill of Cost Application.

Reading the records it is clear that the applicant filed her application within time before Hon. Simfukwe, Deputy Registrar on which the application emanated from the decision of leave granted by Hon. Kisongo, Deputy Registrar. After noting that the application was not proper before her, Hon. Simfukwe, Deputy Registrar granted 21 days for the applicant to file a Bill of Cost before this court. Therefore, counting the days from 12th March, 2020 to the final date to file the Bill of Cost was 2nd April, 2020 and the applicant filed the Bill of Cost before Hon. Tengwa, Deputy Registrar on 1st April, 2020 that means the applicant filed his Application of Bill of Cost within time. For the aforesaid reason, I am in accord with

the applicant's submission that her Bill of Cost No. 29 of 2020 was filed within time. The time started to run from the Order given by Hon. Simfukwe, Deputy Registrar and not Hon. Kisongo, deputy Registrar I am saying so because Mr. Kisongo, Deputy Registrar Order was adhered to on which the applicant filed the Bill of Cost before Hon. Simfukwe, Deputy Registrar, therefore, it was not correct to account for the days from the order issued by Hon. Kisongo, Deputy Registrar.

In the upshot, I vacate the order of Hon. Tengwa, Deputy Registrar in Bill of Cost No. 29 of 2020, and restore the Bill of Cost No. 29 of 2020 for being wrongly dismissed, and the same be heard before another Deputy Registrar.

Order accordingly.

Dated at Dar es Salaam this date 23rd September, 2021.




A.Z.MGEYEKWA

JUDGE

23.09.2021

Ruling delivered on 23rd September, 2021 in the presence of the applicant and the 2nd, 4th, 8th, and 11th Respondents.




A.Z.MGEYEKWA

JUDGE

23.09.2021