IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 139 OF 2020

(Arising from Judgment of Mkuranga District Land & Housing Tribunal Misc. Land Application No. 28 of 2017)

SALMA ISSA NONGWA.....APPELLANT

VERSUS

MAHFUDHI ALLY MKEKENA.....RESPONDENT

Last order:15/02/2021
Judgment: 23/04/2021

JUDGMENT

MANGO, J.

Dissatisfied by the decision of the taxing master in Misc. Application No. 28 of 2017, the appellant preferred this appeal on the following ground;

1. **That the District Land and Housing Tribunal erred in law and facts in failing to consider the law which disallows to issue local receipts to customers, but advocates must issue EFD machine receipts.**
2. **The District Land and Housing Tribunal erred in law and facts when allowed and blessed fake receipts issued by the advocate for the respondent amounting to Tshs. 4,500,000/.**

In her submission the appellant argued that the District Land and Housing Tribunal decision in the Misc. Land application No. 28 of 2017 is bad in law

since all supporting documents are not genuine. She is of the view that the bus tickets tendered by the decree holder were forged.

On the amount taxed as instruction fees she challenged the failure of the decree holder to produce EFD receipt. Citing section 36 of the Tax Administration Act, Act No. 10 of 2015 she argued that failure to produce EFD receipts is fatal and the court should tax off the amount which is not supported by EFD Receipts.

In his reply submission, Mr. Lisanga argued that the appellant did not object anything during hearing of the bill of costs application. He is of the view that this appeal is an afterthought calculated to delay the execution process.

Submitting on the grounds of appeal, he argued that law cited by the judgment debtor that is section 36(1) of the Tax Administration, Act No. 10 of 2015 is not applicable in the matter at hand. The law applicable in bill of costs applications is the Advocates Remunerations Order, GN 264 of 2015. He argued that the cited law does not provide for a mandatory requirement to prove instructions fees by EFD Receipts. As to what should be considered in determining bill of costs applications, he submitted the Court need to examine whether the amounts indicated in the bill of costs are in compliance with the scales stipulated in the Advocates Remunerations Order. In support of this argument, he cited the decision of my sister, Hon. Makani J in the case of **Salehe Habib Salehe versus Manjit Gurmukh Singh and Mohunder Gurmukh Singh** Reference Application No. 7 of 2019, High Court of Tanzania, Land Division at Dar es salaam. He submitted further that the amount taxed in the bill of costs is in compliance with the provisions of the

Advocates Remunerations Order. Thus, he prayed that the appeal be dismissed

I have considered submissions by both parties. According to the submission of the appellant, the only dispute she has on the amount taxed as instruction fees is absence of EFD Receipt. It is trite law that bill of costs is intended to reimburse a decree holder of the costs that he incurred in prosecuting court proceedings.

The duty of the taxing master in court as opposed to the tax officer in a revenue collection authority, is to examine the amounts indicated in the bill of costs and assess its compliance with the law, that is, the Advocates Remunerations Order. As there is no dispute on the amount charged, the only issue is whether failure to produce EFD receipt is fatal. The law, Advocates Remuneration Order does not provide for production of Receipts in proving payment of instruction fees. According to section 39 of GN 264 of 2015, bill of costs should be drawn in accordance with scales provided in the schedules of the Order and section 46 of the Order requires all bills of costs to be taxed on the prescribed scale. As correctly argued by the counsel for the respondent, the Advocates Remuneration Order does not require instruction fees to be proved by receipts. Thus, non-production of EFD receipts by the respondent cannot be considered to be fatal.

The question of EFD receipts in bill of costs has been considered by the Court of Appeal in the case of Tanzania **Rent a Car Limited versus Peter Kimuhu** Civil Reference No. 9 of 2020 Court of Appeal of Tanzania at Dar es salaam in which the Court of Appeal held that it is not a requirement of the

law. Thus, non-attachment of EFD receipt in a bill of costs application is not fatal and the first ground of appeal is hereby dismissed.

On the issue of forgery of the Bus ticket, the Appellant ought to have proved the same on the required standard which is beyond balance of probabilities. Unfortunately, the Appellant did not produce any evidence regarding allegation of forgery of bus tickets. He merely registered his suspicion that the bus tickets might be forged. It is trite law that whoever allege must prove as provided under section 110 (1) & (2) of the Evidence Act, [Cap. 6 R.E 2019]. Mere suspicion cannot be considered to be a proof of the alleged forgery. In such circumstances, I find no reason to interfere with the decision of the District Land and Housing Tribunal. The appeal is hereby dismissed. Given circumstances of this case I award no costs.

THE HIGH COURT OF TANZANIA
LAND DIVISION

Z.D. MANGO

JUDGE

23/04/2020