

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

REFERENCE NO. 03 OF 2022

(Arising from Bill of Costs No. 83 of 2019 Hon. D. Ngunyale- Taxing Master dated 2nd November 2020)

JUMA RAJABU KAPUNGU.....APPLICANT

VERUS

NOVAT DENNIS MUSHI.....1ST RESPONDENT

JULIANA NOVAT MUSHI.....2ND RESPONDENT

Date of last order: 05/9/2022

Date of ruling: 15/9/2022

RULING

A. MSAFIRI, J.

This is the ruling on application for reference lodged in this Court on 29th June 2021 by the above named applicant seeking for the following reliefs namely;

i. *That the Honourable Court be pleased to quash the ruling on Bill of Costs by the Taxing Master awarded in the Bill of Costs No. 83 of 2019 which was pronounced on 2nd November 2019.*

ii. *Costs of the application be taxed in the due cause.* *Adls*

iii. Any other reliefs as the Honourable Court may deem fit and just to grant in the premise hereof.

It is on record that the applicant had lodged in this Court Land Case No. 128 of 2015 against the respondents seeking for several reliefs. The said case was struck out with costs on 23/08/2017. The Applicant later lodged Application No. 182 of 2017 seeking to set aside the "dismissal" order in Land Case No. 128 of 2015 but it was discovered that the said application was misconceived hence it was marked withdrawn on 22nd March 2019, with costs.

The respondents therefore lodged Bill of Costs No. 83 of 2019 seeking costs for both Land Case No. 128 of 2015 and Misc. Land Application No. 812 of 2017 claiming a sum of Tsh 20,000,000/=. The bill of costs was disposed of by way of written submissions and at the end the respondents were awarded a sum of Tsh 6,235,000/= as per the decision of the Taxing Master dated 2/11/2020.

The applicant was aggrieved by that decision hence he intended to challenge it by way of reference. It is on record that this Court granted the applicant an extension of time to lodge the said reference on 14/3/2022

Alle

within 14 days hence the application for reference at hand is well within time.

This application was argued by written submissions pursuant to the order of this Court dated 13/7/2022. Messrs Dickson Matata and Sindilo Lyimo learned advocates represented the applicant and the respondents respectively.

The applicant's major complaint is that it was wrong for the respondents to combine the bill of costs in one application and it was wrong for the taxing master to determine them. The applicant has cited several decisions on consolidation of applications to fortify his stance.

The applicant contended further that Land Case No. 128 of 2015 was struck out on 23rd August 2017 but the bill of costs arising from the said case was lodged almost two years later. Hence it was preferred out of time and therefore the Taxing Master had no jurisdiction to entertain it without there being an order for enlargement of time.

On reply the respondents sought a refuge on the principle of overriding objective contending that the applicant's claim on consolidation of the bills of costs can be cured by the principle of overriding objective. *Ally*

The respondents submitted further that the Taxing Master was right in accepting the application because the overriding objective allowed him to do so and it was the applicant who benefited from such consolidation.

On whether the matter was time barred, the respondents contended that the bill of costs was filed within time because it was an entire bill of costs comprising the main case as well as the application.

On rejoinder the applicant essentially reiterated his submission in chief.

Having gone through the parties' submissions in support and rival to the present application, the fundamental issue for my determination is whether the learned Taxing Master had jurisdiction to determine the application for bill of costs.

I have carefully gone through the record in respect of the Bill of Costs No. 83 of 2019, it is not in dispute that the respondent had combined costs arising from Land Case No. 128 of 2018 as well as Misc. Land Application No. 182 of 2017. The matter was disposed through written submissions. I have gone through the applicant's submission on paragraph 4.8 the last two lines the applicant submitted in no ambiguous terms that

Adly-

the bill of costs arising out of Land Case No. 128 of 2015 was time barred and the taxing master had no jurisdiction to entertain the same. When the respondent filed their rejoinder submission in respect of the bill of costs he said nothing on the applicant's contention.

Now the learned Taxing Master despite being made aware that he had no jurisdiction to entertain the bill of costs before him, he never bothered to say anything or require the parties to address him on that aspect instead he proceeded to invoke the so called overriding objective. I am of the settled opinion that overriding objective could have not been safely invoked in such situation where mandatory requirements of the law were not complied with, worse still in a matter that was time barred.

I think had the learned Taxing Master taken into consideration the applicant's complaint he would have realized that not only the bill of costs in respect of the Land Case No. 128 of 2015 was time barred even also costs in respect of Misc. Civil application No. 812 of 2017 was also time barred and there was no leave granted to the respondent to file the same out of time. I will explain. *Alles.*

Land Case No. 128 of 2015 was struck out with costs on 23/08/2017. The respondents herein whom were the defendants in the said case were required to present their costs for taxation within sixty days from the date the case was struck out. Hence they were supposed to file the same on or before 21/10/2017. They didn't do so as required instead they lodged their bill of costs on 23/5/2019 almost after expiration of **570 days**. Hence without flicker of doubt the taxing master had no jurisdiction to entertain the bill of costs in respect of Land Case No. 128 of 2015.

Coming to the Miscellaneous Land Application No. 182 of 2017, it is on record that the same was struck out with costs on 22/3/2019. Like in the main case, the respondents were required to present their bill of costs arising from the said application within 60 days. Counting from 22/3/2019, sixty days expired on 21/5/2019. The bill of costs was lodged on 23/5/2019, hence it was out of time for two days. Because there was no extension of time granted to the respondents to lodge the same out of time the Taxing Master had no jurisdiction to entertain the same.

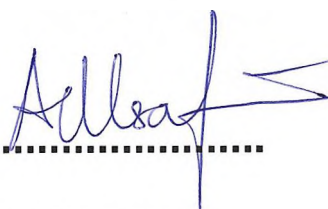
The requirement to lodge bill of costs within 60 days is provided for under Order 4 of the Advocates Remuneration Order GN No. 263 of 2015.

It provides; *Allo*

*A decree holder may, **within sixty** days from the date of an order awarding costs, lodge an application for taxation by filing a bill of costs prepared in a manner provided for under Order 55. [Emphasis added].*

The applicant herein has submitted at length faulting the consolidation of the costs arising from the main case as well as the miscellaneous application. I have no query with such consolidation provided the same were within time. As both were time barred and there being no leave to lodge the same out of time, the learned Taxing Master had no jurisdiction to entertain the same and therefore the decision arising therefrom is a nullity.

In upshot the application is allowed. The order of the Taxing Master dated 2/11/2020 is hereby quashed and set aside. Each party to bear their own costs of the application.



A. MSAFIRI

JUDGE

15/9/2022

