

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

REFERENCE NO. 12 OF 2022

*(Arising from Bill of Costs No. 208 of 2021 Hon. M. B. Mpaze- Taxing Master
dated 6th June 2022)*

JOSEPHAT ELIAS MWINGIRA.....APPLICANT

VERUS

**IMMACULATE SWARE SEMESI (administrator of the estate of the VICENT
MWAHU SEMESI)..... RESPONDENT**

Date of last order: 05/9/2022

Date of ruling: 21/9/2022

RULING

A. MSAFIRI, J.

This is the ruling on application for reference lodged in this Court on 27th June 2022 by the above named applicant seeking for the following reliefs namely;

- i. That the Honourable Court be pleased to reverse the decision of Hon. Mpaze-Dr/ Taxing Officer in Bill of Costs No. 208 of 2021 dated 6th June 2022 between the parties herein on the grounds adduced in the accompanying affidavit.*

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- ii. That costs of this application be met by the respondent herein.*
- iii. Any other relief(s) that the Honourable Court may deem fit and just and to grant.*

It is on record that the respondent had instituted Land Case No. 98 of 2020 against the applicant in this Court seeking for several reliefs. The said case was determined to finality on 22nd October 2021 in favour of the respondent with costs.

The respondent therefore lodged Bill of Costs No. 208 of 2021 seeking the costs she incurred in Land Case No. 98 of 2020. The bill of costs was disposed of orally and at the end the respondent was awarded a sum of Tsh 8,400,000/= as per the decision of the taxing master dated 6/6/2022.

The applicant was aggrieved by that decision hence he preferred the present application for reference to challenge it. In this application, the applicant had the service of Mr. Daniel Ngudungi learned advocate whereas the respondent had the services of Mr. Armando Swenya learned advocate.

ALLS.

This application was argued by written submissions pursuant to the order of this Court dated 10/8/2022.

The applicant's major complaint is twofold. First the taxing master had no jurisdiction because the applicant had already lodged notice of appeal intending to challenge the decision in Land Case No. 98 of 2020 and the said notice of appeal was served to the respondent herein.

According to the applicant, where a notice of appeal has been lodged, the High Court ceases to have jurisdiction over the matter. To fortify his stance several decisions to the effect have been referred to me by the applicant. These include **Aero Helicopter (T) Ltd v F. N. Jensen** [1990] TLR, **Arcado Ntagazwa v Buyogera Julius Bunyango** [1997] TLR 242. In the latter decision the Court of Appeal held;

Once a notice of appeal has been lodged to appeal to the Court of Appeal, then the High Court proceedings must be stayed until the notice is withdrawn or is deemed to be withdrawn.

Secondly, the applicant has faulted the taxing master for awarding a sum of Tsh 6,000,000/= as instruction fee an amount which is manifestly *Allo.*

excessive, unreasonable and the same was taxed without any proof. It was contended that the amount awarded to the respondent as instruction fee is on the high side compared to the nature of the work involved. According to the applicant legal fees are governed by the Advocate Remuneration Order GN No. 264 of 2015 which specify the amount charged according to the service rendered. Hence the applicant has submitted that the amount awarded be reduced to Tsh 2,000,000/=.

On reply, the respondent has forcefully submitted that notice of appeal has nothing to do with the bill of costs. The respondent contended that a notice of appeal is a mere intention to appeal to the Court of Appeal and therefore it is not an appeal.

The respondent has referred to me several decisions as well as statutory provisions to the effect that notice of appeal is not a bar to determine application for bill of costs.

On whether the amount awarded was on the higher side, the respondent contended that the amount awarded by the learned taxing master was reasonable taking into account that the matter was determined in full and to the merit of the case. The respondent has referred to me

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litany of decisions on the principles for awarding costs. In a nutshell the respondent claimed that the amount awarded is reasonable taking into account the same was reduced from Tsh 54,000,000/= to Tsh 6,000,000/=.

On rejoinder submission the applicant essentially reiterated his submission in chief and he added that this Court should order the bill of costs be withdrawn and refiled or be stayed till determination of the appeal.

Having gone through the parties' submissions for and against the application at hand, it is not in dispute that the applicant has already filed a notice of appeal to the Court of Appeal. The applicant has submitted that the learned Taxing Master had no jurisdiction to entertain the bill of costs because there was already notice of appeal lodged.

I have keenly gone through the record in respect of Bill of Costs No. 208 of 2021. It shows that when the matter was called on for hearing on 12th May 2022, Ms. Jackline Kulwa learned advocate for the applicant informed the Court that there is a notice of appeal filed. *Aelle*

It is very unfortunate that the parties were not given a chance to address the Court on the issue of the pendency of the notice of appeal and the way forward instead the matter was heard to finality. This was an error. I state so because the Court was alerted in advance about the pendency of notice of appeal to the Court of Appeal before hearing of the bill of costs. I am of the settled mind that the learned Taxing Master should have determined the concern raised by the applicant as clearly seen on record and give a way forward.

It is for that reason I proceed to quash and set aside the decision of the Taxing Master dated 6th June 2022. I find it unnecessary to determine whether the amount awarded to the respondent was reasonable. I remit the matter before another Taxing Master to determine the concern raised by the applicant on the pendency of notice of appeal against the decision on which the bill costs was based. In the circumstances, each party to bear its own costs. It is so ordered.



A. MSAFIRI
JUDGE
21/9/2022