

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

**REFERENCE NO 06 OF 2022**

*(From Bill of Costs No. 135 of 2019 Delivered on 08 December, 2021)*

**THE REGISTERED TRUSTEES OF MASJID  
JUMUIYATIL ISLAMIA UBUNGO .....APPLICANT**

**VERSUS**

**IBRAHIM S. MAGINGO AND ..... 1<sup>ST</sup> RESPONDENT**

**HALIMA A. KEBE.....2<sup>ND</sup> RESPONDENT**

**SHARIFA SULEIMAN MAGINGO .....3<sup>RD</sup> RESPONDENT**

**MWANAHAWA SULEIMAN MAGINGO .....4<sup>TH</sup> RESPONDENT**

**ZULFIKARI SULEIMAN MAGINGO .....5<sup>TH</sup> RESPONDENT**

**SALIMA SULEIMAN MAGINGO.....6<sup>TH</sup> RESPONDENT**

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**OMARI SULEIMAN MAGINGO .....7<sup>TH</sup> RESPONDENT**

Date of last Order: 22/09/2022

Date of Ruling:05/10/2022

**RULING**

**OMARI, J.:**

The Applicants herein, the Registered Trustees of Masjid Jumuiyat Islamia Ubungo Kinondoni filed this Reference No. 4 of 2022 under Rule 7(1) and (2) of the Advocates Remuneration Order, 2015 GN No. 264 of 2015 (herein the Orders) pleading the court to *inter alia*; examine the Ruling of the Taxing Master in Bill of Costs No. 135 of 2019 delivered by W. A. Hamza Taxing

Master on 8 December, 2021 to satisfy itself as to the correctness, legality or propriety of the said Ruling. In addition, they implored that if the court were to find errors in the said Ruling then it be pleased to revise and quash the said Ruling and set aside the impugned award.

Before hearing of the Reference, the Respondents lodged a Notice of a Preliminary Objection on a point of law that; the Application is time barred and that the Application is incompetent as it contravenes Order 7 (3) of the Orders. They then prayed that the Application be dismissed with costs.

It is noteworthy of mention that on 4 July, 2022 the Applicants also lodged a Notice of a Preliminary Objection containing one ground; which I will not go into for reasons that I shall state hereunder.

The Applicant's preliminary objection was vehemently objected to by the Respondent's learned advocate for not being meritorious but also for being procedurally wrong since there already existed another Preliminary Objection. This was the view of the Court of Appeal in **Consolidated Holding Cooperation (Applying as a Successor of the PSRC) vs. Dunia World Wide Trading Company Ltd and Another**, Civil Appeal No. 146 of 2008. In this case the court made reference to the case of **Frank Kibanga vs. ACU Ltd**, Civil Appeal No. 24 of 2003 (unreported) where it

held that where a Preliminary Objection has been raised, the other party cannot file another objection to pre-empt the said preliminary objection. This has been the view of the CAT in a number of other cases, see for example **Commissioner General (TRA) vs Pan African Energy T. Ltd** (Civil Application 206 of 2016) [2017] TZCA 157.

Therefore, I am inclined to agree with the learned counsel for the Respondent that the Applicant, by raising a preliminary objection while they (the Respondent) already did was seeking to pre-empt the first preliminary objection. The Applicant's preliminary objection therefore cannot be entertained at this juncture.

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At the hearing for the Respondent's preliminary objection, Mr. Elinami Daniel learned advocate argued that the Reference was time barred and incompetent. He asserted that the question of time limitation goes to the jurisdiction of the court. It is a fundamental issue to be resolved. The learned advocate went further to elaborate that it was a cardinal principle of law that when there is a complaint on how a Bill of Costs has been taxed the aggrieved party is at liberty to file an application for reference under the Orders. However, the same is subject to limitation of time. He argued that Order 7 Rule 2 of the Orders require that a reference from the decision of

the Taxing Master be filed within 21 days from the date of receiving the decision awarding the costs. It is on record that the decision subject to the Bill of Costs was delivered on 8 December, 2021 and it was ready for collection in January 2022. This Reference was filed on 12 May, 2022. If one were to count the number of days in between it would be obvious that it was filed outside the prescribed 21 days. This renders the court to be lacking in jurisdiction. The learned counsel prayed that it be dismissed with costs as per the provisions of section 3(1) of the Law of Limitation Act Cap 89 (RE 2019). He also made reference to the Court of Appeal decision of **NBC Limited and IMMA Advocate vs. Bruno Vitus Swalo**, Civil Appeal No. ~~331 of 2019 (unreported)~~ where it held that courts are enjoined not to entertain matters that are time barred as it has an impact on jurisdiction.

In reply the learned advocate for the Applicants, Mr. Victor Kessy began his submission by admitting that the Ruling was delivered on 8 December, 2021 and it was ready for collection in January, 2022 but went on to say that they got it in April 2022 while not remembering the exact date. He argued that time began running when they got the Ruling and contended that the reference was indeed filed within time.

In his rejoinder the learned advocate for the Respondents averred that had they really obtained the Ruling in some unknown date in April of 2022 then this should have been deponed in their Affidavit in support of the Application. He went on to say that there is nowhere in the 8 paragraphs of the said Affidavit where this was stated. He reiterated that the application for reference is time barred and the court lacked the jurisdiction to entertain it.

Assuming that for argument's sake, the Applicants really got the Ruling in April of 2022 and one has to further assume that they got it towards the end of April 2022 on a date that would make 12 May, 2022 within time. The

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Notice for the Respondent's Preliminary Objection was filed on 20 June, 2022 up to the day of the hearing when this preliminary objection is being determined the Applicant did not trouble themselves to establish an exact date when they got the said Ruling. It would be moot for me to make assumptions since I would be called to prove them. However, it is my considered opinion that this kind of inadvertence is too convenient to the argument that the Application was filed within time. This being the case, I shall not rule on this particular point of preliminary objection.

Submitting on the second point of the preliminary objection that the Application for Reference contravenes Order 7(3) of the Orders, which requires that the Applicants in a Reference should serve the Respondents within 7 days from the date of filing. The Reference was filed on 12 May, 2022. The Respondents were served on 6<sup>th</sup> June 2022 with summonses bearing the date 18 May, 2022 clearly more than the legally prescribed 7 days. He prayed for the Application to be dismissed as it has been brought to court in contravention of the law.

In his reply, the learned advocate for the Applicant explained that the delay was not their doing, rather it was the Court's since they were only availed with the summons on 21 May, 2022 which were later received by the Respondents on 06 June, 2022 so they are within time.

In his rejoinder the learned advocate for the Respondents reiterated Order 7(3) of the Orders and reminded his learned brother that the said had the descriptor 'shall' within 7 days. This meant that the service was to be affected before the lapse of the said 7 days. He contended that the law does not prescribe that service needed to be through summons it actually stipulates it is copies of the application that needed to be served to the Respondents'. He went on to say even if one were to start counting on 21 May, 2022 as

alluded by the learned advocate for the Applicant they would still be out of time.

After hearing the submissions of both sides and perusal of the record I am once again inclined to agree with the learned advocate for the Respondent that the Application for Reference has been filed hopelessly out of time. The Ruling of the Taxing Master in the Bill of Costs No. 135 of 2019 was delivered on 8 December, 2021 the said Referece was filed in 12 May, 2022. As we have already stated herein above even if there is a reasonable explanation as to why the Ruling was obtained by the Applicants in a unknown date in April 2022 this Reference is still filed out of time.

It is for those reasons that I uphold the Respondents preliminary objection and dismiss the Application with costs.

It is so ordered.

Dated at Dar es Salaam on this 30<sup>th</sup> Day of September, 2022.



**A.A. OMARI**  
**JUDGE**  
**30/09/2022**