

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

MISC. APPLICATION NO. 414 OF 2021

(Arising from Bill of Costs No. 61 of 2020)

EFC TANZANIA MICROFINANCE BANKAPPLICANT

VERSUS

PETER ZAKARIA SAMO 1ST RESPONDENT

MSOLOPA INVESTMENT COMPANY LTD2ND RESPONDENT

RULING

Date of last Order: 28/09/2022

Date of Ruling: 07/10/2022

KHALFAN, J.

The applicant has applied for extension of time upon which she may file her application for reference against the Ruling in Bill of Costs No.61 of 2020. The application is made under **Rule 8 (1 and 2) of the Advocate Remuneration Order GN No. 263 of 2015** as supported by the affidavit of Ahmed Hassan.

The brief facts leading to this application are such that, the application of the Bill of Costs was filed by the first respondent, Mr. Peter Zacharia



Samo. The said application was heard by S.H Simfukwe, DR, who taxed it to the tune of TZS 8,480,000/= in favour of the first respondent. The said Ruling was delivered in the absence of the applicant without notice to that effect.

That, upon receipt of the application, the first respondent filed his counter affidavit opposing the same. On the other hand, the second respondent was served vide substituted service by publication but he neither filed counter affidavit nor entered appearance. When the matter came for hearing, Mr. Stephen Mayombo, learned Advocate, appeared for the applicant while Mr. Peter Zacharia, first respondent appeared in person.

The main issue for determination is whether the applicant has proved sufficient cause warranting the grant of extension. In his submission, Mr. Mayombo, argued mainly on the ground of illegality. He put his submission into two categories: Firstly, that, the impugned Ruling is tainted with illegality, as the Court awarded the sum of TZS 8,480,000/=. He went on submitting that upon the delivery of the Ruling, the applicant discovered on the face of record that the Court ordered the first respondent to be paid TZS 200,000/= in each of his



attendance. He insisted that the taxed amount was contrary to the Advocate Remuneration Order which requires in each attendance before the Court to be TZS 30,000/= up to TZS 50,000/=.

Secondly, he maintained that, the Court ordered for the instruction fees to be paid in absence of record in respect to the legal representation. According to the said order, he emphasized that, it clearly stipulates that there is a need to be given instructions for legal representation and not otherwise. To cement his submission, he cited the case of **Abdul A. Milanzi vs. Asha Makeo**, DC Civil Appeal No. 10 of 2021(unreported). On the part of the first respondent, in reply to the submission, he disagreed in toto the submission in chief of Mr. Mayombo. In respect of the illegality as to the amount awarded, he submitted that, the taxed amount of the Bill of Costs was correctly awarded to him based upon the circumstances of the matter.

In his rejoinder, Mr. Mayombo reiterated what he submitted in his submission in chief. He further maintained that; the first respondent has never engaged any learned advocate. He concluded by praying this application to be granted.



I now turn to the issue of contention as reproduced above based on submissions on both sides and authorities in support thereof. The issue is whether the application is meritorious. In determining the application, I have considered the question of illegality submitted by both parties.

The position of the law in the case of **Abdul A. Milanzi v. Asha Makeo (supra)**, is such that, the issue of illegality consists of sufficient reason. In the cited case at page 13 of the Judgment, this Court referred to the case of **Principal Secretary Ministry of Defence & National Service v. Devran Valambhia** [1992] TLR 387, in which the Court stated that:

'Where the point of law at issue is the illegality or otherwise of the decision being challenged, that is a point of law of sufficient importance to constitute a sufficient reason...'

In the instant application, the applicant has referred the Court to paragraph 7 of Mr. Ahmed Hassan, which establishes irregularity of the impugned Ruling as to the failure to notify the applicant on the date of Ruling. As for the illegality, Mr. Mayombo relied on the contents of



paragraph 5 of the said affidavit. He further submitted that; the amount awarded, namely, TZS 8,480,000/=, by using Advocates' Remuneration Order, 2015, while the respondent is not an advocate. He added that, the amount awarded for each attendance before the Court was at the rate of TZS 200,000/= without any proof and justification.

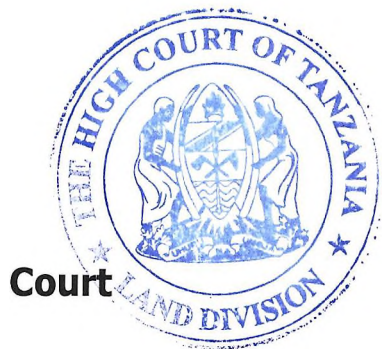
I have considered the applicant's submission on this point. The law is clear under **Rule 23 (a) of Eighth Schedule to the Advocates Remuneration Order, 2015**. It provides the limits of attendance fees where there are instructions to an advocate. In this matter, the record establishes that the first respondent did not instruct any advocate. According to **Rule 8 (1) of GN. No. 263 of 2015**, this Court has discretion to extend the time for filing a reference upon sufficient cause.

In the upshot and for the foregoing reasons, I am of the considered view that the applicant has advanced the point of illegality which is a sufficient cause to warrant granting of the extension of time within which the applicant may file an application for Reference against the Ruling in Bill of Costs No. 61 of 2020 within 30 days from the date



hereof. In the circumstances of this application, I grant no order as to costs.

Dated at Dar es Salaam this 7th day of October, 2022.



**F. R. KHALFAN
JUDGE
07.10.2022**

Ruling delivered this 7th day of October, 2022 in the presence of Mr. Stephen Mayombo, learned Advocate for the applicant and Mr. Peter Zakaria Samo, first respondent.



**F. R. KHALFAN
JUDGE
07.10.2022**