

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**TAXATION REFERENCE NO. 16 OF 2022**

*(Arising from the decision of the taxing officer **Hon. M.N. Ntandu -DR** in  
Bill of costs No. 29 of 2022 dated 10<sup>th</sup> day of August, 2022)*

**RENALTUS MPONZI ..... APPLICANT**

**VERSUS**

**ASHA HEMED IDD (Administrator of the Estate of the**

**late HEMED IDD BOMBA) ..... RESPONDENT**

**RULING**

Date of last Order: 21.11.2022

Date of Ruling: 24.11.2022

**A. Z. MGEYEKWA, J**

This is a reference that emerged from the decision of the Taxing Master in Bill of costs No. 29 of 2022 dated 10.08.2022. The application herein is made under Order 7 (1) and (2) of the Advocates Remuneration Order

GN.264 of 2015. The application is supported by an affidavit deponed by Mr. John E. Mponela, learned counsel for the applicant. Opposing the application, the respondent filed his counter-affidavit deponed by Mr. Edson Mbogoro, learned counsel for the respondent.

The Court acceded to the appellant's proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

The applicant in his Chamber Summons prayed for the following orders:-

1. *That, this Honourable Court be pleased to set aside the ruling of the Deputy Registrar dated 10.08.2022 in Bill of costs No. 29 of 2022 and dismiss the bill of costs No. 29 of 2022 which was filed out of time.*
2. *Costs to follow events.*

The applicant's counsel for the applicant started by submitting that the applicant is challenging the decision of a Taxing Master dated 10<sup>th</sup> August, 2022 on the ground that it was filed out of time contrary to Order 4 of the Advocates Remuneration Order GN. 264 of 2015 which provides:-

*"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."*

The learned counsel for the applicant, that the Judgment on Land Appeal No. 161 of December, 2021 within which the costs were awarded was delivered on 14<sup>th</sup> December, 2021, and that the Application for Bill of cost No. 29 of 2022 was filed on 14<sup>th</sup> February, that there was a delay of 3 days, hence that the application is out of time.

Furthermore, counsel for the Applicant contended that the time starts to run on the very day that the Judgment was delivered that is from 14<sup>th</sup> December, 2021 to 14<sup>th</sup> February, 2022.

In his reply, Mr. E.O. Mbogoro, Counsel for the respondent contended that the Application No. 29 of 2022 was lodged at this Court within time and that the law governing the same are sections 43 and 46 of the Law of Limitation Act, Cap.89 [R.E. 2019]. He went on to submit that the computation of time is governed by section 19 (1) of the Law of Limitation Act, Cap.89 [R.E. 2019], hence the days started to run from 15<sup>th</sup> December, 2021, and that on 12<sup>th</sup> February, 2022 was the last day, but that the same and the next day was not a working day, until Monday on 14<sup>th</sup> February, 2022. He submitted that as per Section 19 (6) of the Law of Limitation Act, Cap.89 [R.E. 2019] the two days were to be excluded in the computation of the days.

In conclusion, the counsel for the applicant, the application was filed within time prescribed by law, thus this taxation Reference be dismissed with costs.

In his rejoinder, counsel for the applicant reiterated what was stated in chief, and further added that the specific governing law on this reference is the Advocates Remuneration Order, GN 264 of 2015, and not the Law of Limitation Act, Cap.89 [R.E. 2019], unless there is a contrary intention or lacuna in the specific law.

Having gone through the submission of the parties, it would appear that the Land Appeal No. 161 which resulted in the Bill of cost No. 29 of 2022, was delivered on 14<sup>th</sup> December, 2021 and the Application for Bill of costs was filed on 14<sup>th</sup> February, 2022, on the 62<sup>nd</sup> day from when the Judgment was delivered.

Order 4 of the Advocates Remuneration Order GN. 264 of 2015 which provides that:-

*“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.”*

Land Appeal No. 161 of 2021 within which the costs were awarded was delivered on 14<sup>th</sup> December, 2021, and the Application for Bill of Cost No. 29 of 2022 was filed on 14<sup>th</sup> February, 2022.

In the computation of time, I am guided by the provision of the Interpretation of Laws Act, Cap. 1 [R.E 2019] specifically section 60 (1), (h) and (2) of the Act, the Saturday, Sunday and public holiday are excluded, the act is considered to be done on the next day. For ease of reference I reproduce section 60 (1), (h), and (2) as hereunder: -

*'In computing time for the purposes of written law-*

*(a).....*

*(b).....*

*(h) where an act or proceeding is directed or allowed to be done or taken on a certain day, or on or before a certain day, then, if that day is an **excluded day**, the act or proceeding shall be considered as done or taken **in due time** if it is done or taken on the **next day that is not an excluded day**.*

*(2) For the purposes of this section, "**excluded day**" means **Saturday, Sunday, or public holiday** throughout or in that part of which is relevant to the event, act, thing, or proceeding concerned.' [Emphasis added].*

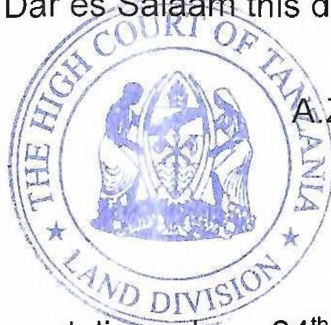
That being the case, I had to peruse the records and noted that, the days started to run on 15<sup>th</sup> February, 2022 and ended on Saturday, 12<sup>th</sup>

February, 2022. Therefore, the last day to lodge the instant application was on 12th February, 2022, however, the said day was Saturday, and the next day was Sunday on 13th February, 2022. The applicant filed his application on Monday, 14th February, 2022 hence she was within time. Hence, it is my finding that Application No. 29 of 2022 was within time.

For the aforesaid reasons, I hold that the Bill of Costs No. 29 of 2022 was lodged within time. The application is disallow without costs.

Order accordingly.

Dated at Dar es Salaam this date 24<sup>th</sup> November, 2022.



  
A.Z.MGEYEKWA

**JUDGE**

24.11.2022

Ruling was delivered on 24<sup>th</sup> November, 2022 in the presence of the applicant and the respondent were remotely present.



  
A.Z.MGEYEKWA

**JUDGE**

24.11.2022